(23,325)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 750.

THE LINN & LANE TIMBER COMPANY AND CHARLES A. SMITH, APPELLANTS,

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

	Page
Names and addresses of attorneys of record	1
Stipulation as to printing record	1
Order extending time to file transcript in United States circuit court of appeals	3
Citation on appeal to United States circuit court of appeals	4
Transcript from the circuit court of the United States for the district of Oregon	5
Bill of complaint	6
Marshal's return to subpœna	24
Subpœna	25
Motion for order on Nils O. Werner *et al.* to appear	27
Affidavit of John McCourt in support of foregoing motion	28
Marshal's return of service of complaint, &c.	32
Order on Nils O. Werner *et al.* to appear, &c.	33

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 13, 1912.

Page

Plea of Frederick A. Kribs *et al.* ... 36
Order granting time to file amended bill ... 40
Plea of Nils O. Werner *et al.* ... 42
Orders extending time to file amended bill ... 47
Amended bill of complaint ... 49
Order for subpœna to Linn & Lane Timber Co. ... 76
Marshal's return ... 77
Subpœna to Linn & Lane Timber Co. ... 79
Order granting time to plead to amended bill ... 80
Appearance of Linn & Lane Timber Co. ... 81
Answer of Nils O. Werner ... 82
Answer of Linn & Lane Timber Co. ... 100
Replication to answer of Nils O. Werner *et al.* ... 118
Replication to answer of Linn & Lane Timber Co. ... 120
Order setting cause for final hearing ... 121
Objections of Chas. A. Smith and Linn & Lane Timber Co. to proposed amendment to amended bill ... 122
Affidavit of John McCourt ... 123
Order of submission of motion for leave to amend bill ... 124
Order allowing *pro forma* motion to amend bill ... 125
Amendment of bill, filed April 22, 1910 ... 126
Answer of Linn & Lane Timber Co. *et al.* to amendment to bill ... 127
Order appointing special examiner ... 130
Order as to taking evidence ... 131
Order allowing filing of amendment to amended bill, &c. ... 133
Amendment to bill filed August 6, 1910 ... 133
Decree ... 136
Testimony and exhibits taken and introduced before the court ... 143
Proceedings at Portland, April 19, 1910 ... 144
Certain offers of evidence ... 147
Testimony of Mrs. Luella Ingersoll ... 166
Mrs. C. E. Lovejoy ... 224
Proceedings at Portland, April 20, 1910 ... 238
List of timber and stone sworn statements ... 242
Statement of groups of filings ... 243
Statement of dates of proofs ... 246
Statement of fees collected ... 248
Testimony of Thomas R. Wilson ... 251
Ed. Finley ... 269
Basil H. Wagner ... 288
Neal Dozier ... 321
Henry Blakely ... 336
C. J. Reed ... 368
John Harrison ... 369
Fred C. Rabb ... 375
Dan W. Tarpley ... 378
Harry Saltmarsh ... 434
Jay S. Phillips ... 452
Horace G. McKinley ... 477
Clel Nash ... 485
John Harrison (recalled) ... 490
Horace G. McKinley (resumed) ... 511

Page

U. S. Exhibit No. 79—Letter, dated Salem, January 9, from S. A. D. Puter to Horace G. McKinley. 513
No. 80—Letter, dated Portland, Oregon, January 20, from S. A. D. Puter to Horace G. McKinley..... 514
No. 81—Letter, dated Chicago, January 22, 1900, from S. A. D. Puter..... 516
No. 82—Telegram, dated Duluth, Minnesota, January 25, 1900, from S. A. D. Puter to H. G. McKinley..... 517
No. 83—Letter, dated West Superior, Wisconsin, January 25, 190-, from S. A. D. Puter to Horace G. McKinley..... 517
No. 84—Letter, dated West Superior, Wisconsin, January 25, from S. A. D. Puter to Horace G. McKinley..... 519
No. 85—Letter, dated January 28, 1900, from S. A. D. Puter to Horace G. McKinley 520
No. 86—Telegram, dated La Cross, Wisconsin, January 29, 1900, from S. A. D. Puter to H. G. McKinley..... 521
No. 87—Letter, dated January 29, from S. A. D. Puter to Horace G. McKinley..... 521
No. 88—Telegram, dated Minneapolis, Minnesota, January 30, 1900, from S. A. D. Puter, to H. G. McKinley..... 522
No. 89—Letter, dated Minneapolis, Minnesota, January 30, 1900, from S. A. D. Puter to H. G. McKinley..... 523
No. 90—Letter, dated January 31, 1900, from S. A. D. Puter to Horace G. McKinley 524
No. 91—Letter, dated Appleton, Wisconsin, February 1, 1900, from S. A. D. Puter to Horace G. McKinley... 525
No. 92—Telegram, dated Chicago, Illinois, February 2, 1900, from S. A. D. Puter to H. G. McKinley..... 526
No. 93—Telegram, dated Chicago, Illinois, February 3, 1900, from S. A. D. Puter to H. G. McKinley..... 526
No. 94—Letter, dated Feb. 3, 1900, from S. A D. Puter to Horace G. McKinley..... 527
No. 95—Telegram, dated New York, February 5, 1900, from N. H. Withee to H. G. McKinley 528
No. 96—Telegram, dated Omaha, Nebraska, February 14, 1900, from S. A. D. Puter to H. G. McKinley..... 528
No. 97—Letter, dated Sunday, 18, 1900, from S. A. D. Puter to Horace G. McKinley. 528
No. 98—Letter, dated February 20, 1900, from S. A. D. Puter to Horace G. McKinley. 531

Page

U. S. Exhibit No. 99—Telegram, dated San Francisco, February 20, 1900, from S. A. D. Puter to H. G. McKinley 532
No. 100—Telegram, dated Ashland, Oregon, February 24, 1900, from S. A. D. Puter to H. G. McKinley 532
No. 101—Letter, dated March 4, 1900, from S. A. D. Puter to Horace G. McKinley 533
No. 102—Letter, dated March 5, 1900, from S. A. D. Puter to Horace G. McKinley. 534
No. 103—Letter, dated San Francisco, March 6, 1900, from S. A. D. Puter to Horace G. McKinley 534
No. 104—Letter, dated March 8, 190-, from S. A. D. Puter to Horace G. McKinley 536
No. 105—Letter, dated March 8, 1900, from S. A. D. Puter to Horace G. McKinley .. 536
No. 106—Letter, dated March 9, 1900, from S. A. D. Puter to Horace G. McKinley. 537
No. 107—Letter, dated March 20, 1900, from S. A. D. Puter to Horace G. McKinley. 539
No. 108—Letter, dated Appleton, Wisconsin, March 24, 1900, from S. A. D. Puter to Horace G. McKinley 540
Testimony of C. E. Loomis 613
O. A. McClallen 630
Proceedings at Portland, April 23, 1910 637
Offers of exhibits, &c 637
U. S. Exhibit No. 179—Letter, dated Minneapolis, Minnesota, July 26, 1900, from C. A. Smith Lumber Co. to S. A. D. Puter 645
No. 180—Letter, dated Minneapolis, Minnesota, January 10, 1901, from C. A. Smith Lumber Co. to R. V. Belt 646
No. 181—Letter, dated Minneapolis, Minnesota, January 18, 1901, from C. A. Smith Lumber Co. to S. A. D. Puter 647
No. 182—Letter, dated Minneapolis, Minnesota, January 19, 1901, from C. A. Smith Lumber Co. to S. A. D. Puter 648
No. 183—Telegram, dated Washington, D. C., January 19, 1901, from S. A. D. Puter to C. A. Smith 650
Testimony of S. A. D. Puter 657
Proceedings as to further evidence 795
Proceedings at Portland, May 4, 1910 798
U. S. Exhibit No. 169—Letter, dated Washington, D. C., November 26, 1900, from Binger Hermann to E. D. Stratford 806
No. 170—Letter, dated Roseburg, Oregon, December 24, 1900, from E. D. Stratford to the Commissioner of the General Land Office 809

Page

U. S. Exhibit No. 171—Check, dated Roseburg, Oregon, March 8, 1901, from Fred A. Kribs to the First National Bank of Roseburg... 811
No. 172—Letter, dated Roseburg, Oregon, March 9, 1901, from E. D. Stratford to the Commissioner of the General Land Office 812
No. 173—Letter, dated Roseburg, Oregon, March 9, 1901, from E. D. Stratford to the Commissioner of the General Land Office 818
No. 174—Letter, dated Washington, D. C., April 15, 1901, from Binger Hermann to E. D. Stratford..... 822
No. 175—Letter, dated Roseburg, Oregon, December 28, 1901, from E. D. Stratford to the Commissioner of the General Land Office..... 827
No. 176—Letter, dated Washington, D. C., February 10, 1902, from W. A. Richards to E. D. Stratford..... 830
No. 177—Letter, dated Washington, May 17, 1902, from E. A. Hitchcock to the Commissioner of the General Land Office 832
No. 178—Letter, dated Washington, D. C., May 28, 1902, from W. D. Harlan to the Commissioner of the General Land Office..... 847
Memorandum of settlement and accounting..... 849
Supplemental agreement, December 21, 1901..... 851
Testimony of Ralph P. Cowgill..... 852
Louis R. Glavis..... 874
L. M. Curl 879
Grant Froman..... 887
Irvine Rittenhouse 892
T. R. Sheridan 907
A. R. Greene..... 915
U. S. Exhibit No. 155—Deed, dated June 4, 1906, from Charles A. Smith and Johanna A. Smith to the Linn & Lane Timber Company.. 925
No. 157—Deed, dated May 28, 1907, from Charles J. Swanson and Christine Swanson to the Linn & Lane Timber Company. 938
No. 161—Deed, dated August 15, 1907, from Nils O. Werner and Eva C. Werner to the Linn & Lane Timber Company.... 945
No. 162—Certificate of incorporation of the Linn & Lane Timber Company..... 948
No. 163—Power of attorney given to Fred A. Kribs by the Linn & Lane Timber Company..... 954

	Page
U. S. Exhibit No. 168—Declaration of purpose to engage in business in the State of Oregon	957
No. 171—Check, dated Roseburg, Oregon, March 8, 1901, from Fred A. Kribs to First National Bank of Roseburg	963
No. 184—Check, dated Roseburg, Oregon, February 13, 1902, from Fred A. Kribs to Mitchell & Tanner	964
No. 185—Check, dated Roseburg, Oregon, June 14, 1902, from Fred A. Kribs to Mitchell & Tanner	965
No. 186—Check, dated Roseburg, Oregon, October 15, 1901, from Fred A. Kribs to Mitchell & Tanner	966
Minutes of board of directors' meeting of Linn & Lane Timber Co.	967
Defendants' Exhibit "I"—Agreement between C. A. Smith, C. J. Johnson and the Swedish-American National Bank	988
Exhibit "J"—Assignment of shares of stock from C. A. Smith and C. J. Johnson to the Swedish-American National Bank	994
Testimony of Peter Buffington	1000
Frederick A. Kribs	1008
U. S. Exhibit No. 196—Letter, dated Portland, Oregon, February 8, 1902, from Fred A. Kribs to S. A. D. Puter	1086
Government's Exhibit No. 197—Letter, dated Washington, D. C., Feb. 26, 1900, from Britton & Gray to Binger Hermann.	1110
Government's Exhibit No. 198—Letter, dated Washington, D. C., March 10, 1900, from Britton & Gray to Binger Hermann	1111
Affidavit of Douglas Atkinson in U. S. Exhibit 2	1119
Charles Barr in U. S. Exhibit 4	1123
H. C. Barr in U. S. Exhibit 6	1126
Luella Beeman in U. S. Exhibit 8	1129
H. W. Blakely in U. S. Exhibit 10	1132
Peter Buffington in U. S. Exhibit 15	1137
Charles Burley in U. S. Exhibit 19	1139
J. B. Cooley in U. S. Exhibit 21	1141
John L. Green in U. S. Exhibit 26	1144
John Harrison in U. S. Exhibit 28	1145
John J. Jaggy in U. S. Exhibit 32	1148
Benj. F. Kirk in U. S. Exhibit 34	1151
Jay S. Phillips in U. S. Exhibit 38	1153
S. A. D. Puter in U. S. Exhibit 42	1155
Harry Saltmarsh in U. S. Exhibit 44	1159
Zebulon Smith in U. S. Exhibit 46	1163
J. W. Stilwell in U. S. Exhibit 48	1167
G. L. Thompson in U. S. Exhibit 50	1170
Thos. Wilson in U. S. Exhibit 52	1174

	Page
U. S. Exhibit No. 53—Report of fraudulent claim or entry	1176
No. 64—Affidavit of Basil H. Wagner	1210
No. 69—Affidavit of Henry Blakely	1213
No. 70—Affidavit of John Harrison	1215
No. 189—Stipulation in cause entitled United States of America *vs.* Nils O. Werner *et al*	1216
No. 190—F. A. Kribs' bank account No. 1	1223
No. 191—Check, dated May 16, 1900, from Fred A. Kribs to Henry Booth	1241
No. 192—Check, dated April 25, 1900, from Fred A. Kribs to S. A. D. Puter	1242
No. 193—Check, dated May 8, 1900, from Fred A. Kribs to S. A. D. Puter	1242
No. 194—Check, dated May 16, 1900, from Fred A. Kribs to S. A. D. Puter	1243
No. 195—Check, dated May 22, 1900, from Fred A. Kribs to S. A. D. Puter	1243
Defendants' Exhibit "K"—Agreement to purchase land, dated February 8, 1900, between Stephen A. D. Puter and C. A. Smith Lumber Company	1244
"M"—Letter, dated March 5, 1900, from C. A. Smith Lumber Co. to S. A. D. Puter	1247
Testimony and exhibits taken and introduced before special examiner	1248
Testimony of Mrs. Ethel Steele	1249
Charles L. Trabert	1266
Edgar L. Mattson	1296
John Lind	1327
Charles A. Smith	1333
Special examiner's certificate	1382
Defendants' Exhibit "C"—Deed, dated June 4, 1906, from Charles A. Smith and Johanna A. Smith to the Linn & Lane Timber Company	1384
"D"—Deed, dated June 4, 1906, from Charles A. Smith and Johanna A. Smith to the Linn & Lane Timber Company	1388
"M"—Check, dated July 31, 1906, from the C. A. Smith Timber Company to Mrs. Ethel Steele	1392
"N"—Receipt, dated May 24, 1906, from J. H. Block, Jr., to the Linn & Lane Timber Company	1393
"O"—Certificate of incorporation	1393
"P"—Certificate of authority to engage in business within the State of Oregon	1395
Opinion by Bean, J	1399
Letters testamentary to Eva C. Werner	1419
Notice of appeal and to join in appeal	1421
Petition for appeal	1423
Assignment of errors	1424
Order allowing appeal, &c	1435

	Page
Bond on appeal	1436
Stipulation as to record	1438
Stipulation as to Government exhibits, &c	1442
Clerk's certificate to record	1444
Certified copy of marshal's return of service of subpœna on Fred'k A. Kribs	1446
Certificate of clerk of United States circuit court of appeals to printed record	1448
Caption to proceedings in United States circuit court of appeals	1449
Order of submission	1449
Opinion by Gilbert, J	1450
Decree	1458
Petition for appeal	1458
Affidavit of value	1459
Assignment of errors	1460
Order allowing appeal, &c	1465
Order for supersedeas	1466
Bond on appeal	1466
Præcipe for record	1468
Clerk's certificate	1468
Citation	1469
Acceptance of service of citation	1470

(Title of Court and Cause.)

Names and Addresses of the Attorneys of Record.

Mr. JOHN LIND, Mr. A. UELAND and Mr. W. M. JEROME, Minneapolis, Minnesota, and DOLPH, MALLORY, SIMON & GEARIN, Portland, Oregon, for Appellants,

Mr. JOHN McCOURT, United States Attorney, Portland, Oregon, for Appellee.

(Title of Court and Cause.)

Stipulation as to Printing of Record.

It is hereby stipulated between the appellants, by their solicitors and counsel, and the appellee by the United States Attorney for the District of Oregon, as follows:

1. If the appellants be so advised they may cause the transcript on the appeal in the above-entitled cause to be printed, certified and filed in said Court of Appeals as provided by the Act of February 13, 1911, and the order or rule of the Supreme Court promulgated March 13, 1911, the appellee hereby waiving all objections for noncompliance with Rule 23 of said Court of Appeals and all objections by reason of no rule having been adopted by the Circuit Court for the District of Oregon, as contemplated by said Act; and if appellants be so advised they may, without further notice, apply to said Circuit Court for a rule or order authorizing said transcript to be printed, certified and filed as in this paragraph provided.

2. But if the appellants be so advised, they may have said tr*na*script printed as now provided by said

Rule 23 of said Court of Appeals.

3. It is agreed that whether the printing of said transcript be done in accordance with paragraph 1 or in accordance with paragraph 2 hereof, the following parts thereof may be omitted in said printing, to wit:

Praecipe of appearance for Frederick A. Kribs found on page 23; U. S. Exhibits 164 to 167, inclusive, found on pages 956 to 969, inclusive; notice to certain defendants to join in appeal, found on pages 1411 to 1414; certificate in blank of Stephen Sanford, found on page 1239 and the title of the case except in the original bill, the amended bill and the opinion of the Court, and whenever the title is so omitted, there shall be printed in place thereof "(Title of Court and Cause)."

Dated April 3d, 1911.

JOHN McCOURT,
United States Attorney for the District of Oregon.
JOHN LIND,
A. UELAND,
JOHN M. GEARIN,
Solicitors and Counsel for said Appellants.

[Endorsed]: No. 1973. In the Circuit Court of Appeals, for the Ninth Circuit. The United States of America, Plaintiff, vs. Nels O. Werner, Chas. A. Smith et al., Defendants. Stipulation. Filed Apr. 5, 1911. F. D. Monckton, Clerk.

[Order Extending Time to File Transcript in U. S. Circuit Court of Appeals.]

(Title of Court and Cause.)

Now at this day comes the complainant by Mr. John McCourt, the United States Attorney for said District of Oregon, and the defendants Charles A. Smith, and Linn & Lane Timber Company, by Mr. John M. Gearin and Mr. A. Ueland, of counsel, and thereupon this cause comes on to be heard upon the motion of said defendants Charles A. Smith and Linn & Lane Timber Company, for an extension of time in which to file a transcript therein in the United States Circuit Court of Appeals for the Ninth Circuit, and counsel consenting thereto, it is ordered that the time heretofore granted in which to file said transcript in said United States Circuit Court of Appeals for the Ninth Circuit be and the same is hereby extended to June 1st, 1911.

Dated March 27th, 1911.

WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: No. 1973—C. C. A. No. 3320. In the Circuit Court of the United States for the District of Oregon. United States of America, Complainant, vs. Nels O. Werner, Chas. A. Smith, et al., Defendants. Order Extending Time to File Transcript. Filed Apr. 5, 1911. F. D. Monckton, Clerk.

Citation on Appeal [Original].

No. 3320.

United States of America,
District of Oregon,—ss.

To United States of America, Greeting:

Whereas, The Linn & Lane Timber Company and Charles A. Smith have lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered in the Circuit Court of the United States for the District of Oregon, in your favor, and has given the security required by law: You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 7th day of March, in the year of our Lord, one thousand nine hundred and eleven.

R. S. BEAN,
Judge. [1*]

Due service of the foregoing Citation on Appeal is admitted this March 7th, 1911.

JOHN McCOURT,
U. S. Attorney.

[Endorsed]: No. 3320. United States Circuit Court, District of Oregon. United States of America, Complainant, vs. Nels O. Werner et al., Defend-

[*Page number appearing at foot of page of original certified record.]

ants. Citation on Appeal. Filed March 7, 1911. G. H. Marsh, Clerk.

In the Circuit Court of the United States for the District of Oregon.

April Term, 1908.

Be it remembered, that on the 25th day of May, 1908, there was duly filed in the Circuit Court of the United States for the District of Oregon, a Bill of Complaint, in words and figures as follows, to wit: **[2]**

In the Circuit Court of the United States, for the District of Oregon.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NILS O. WERNER and EVA C. WERNER, His Wife, THE FIRST TRUST AND SAVINGS BANK OF ILLINOIS, ROBERT E. GREACEN, HUBERT E. ROGERS, JOHN A. WILLD, C. A. SMITH, FREDERICK A. KRIBS, STEPHEN A. D. PUTER, JOHN L. GREEN, THOMAS WILSON, CHARLES BARR, CHARLES BURLEY, NEAL D. DOZIER, HARRY SALTMARSH, HARRY C. BARR, EDWARD FINLEY, JOHN J. JAGGY, J. S. PHILLIPS, ZEBULIN SMITH, DOUGLAS ADKINSON, SADIE E. PUTER, ELVIRA S. JACOBS, ISAAC R. BORUM, BENJAMIN F. KIRK, GEORGE L. THOMPSON, PETER BUF-

FINGTON, JOHN HARRISON, JENNIE MOULTON, JACOB W. STILLWELL, HENRY BLAKELY, ELAM MILLER, FRANK W. BURFORD, JAMES B. COOLEY, LUELLA BEEMAN and HUGH BLAKELY,

Defendants.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States of America, for the District of Oregon, in Chancery Sitting:

Your orator, the United States of America, by and under the authority and direction of the Attorney General of the United States, brings this bill in equity against the above-named defendants, and each of them, and thereupon your orator complains of said defendants respectively, and shows unto your Honors:

I.

That the First Trust and Savings Bank of Illinois was at all the dates and times hereinafter mentioned, and is now, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois. **[3]**

II.

That the defendants Nils O. Werner and Eva C. Werner are, and were at all the times hereinafter mentioned, husband and wife.

III.

That the complainant is now, and was until the dates and times herein mentioned, the owner of the following described lands and premises, situate in the county of Linn, State and District of Oregon, and

had the full legal title thereto at all said dates and times prior to the 12th day of August, 1902, which said lands were, until the times herein mentioned, part of the public domain of the United States of America, and are particularly bounded and described as follows, to wit:

"The South ½ of Section 24, Township 14 South, Range 2 East of the Willamette Meridian; all of Section 14; North ½ of Section 20; Northwest ¼ and Southeast ¼ of Section 22; West ½ of Section 24; Northwest ¼ of Section 28; Northeast ¼ of Section 31, and all of Sections 34 and 35, in Township 14 South, Range 3 East of the Willamette Meridian; the Northwest ¼ of the Southeast ¼ of Section 18, the Northeast ¼ of the Northeast ¼ of Section 25, the Southwest ¼ of the Southeast ¼ of Section 28, West ½ of the West ½ of Section 29, all of Sections 30 and 31, and the West ½ of Section 32; all in Township 14 South, Range 4 East of the Willamette Meridian, situate in the Roseburg Land District of the State of Oregon."

IV.

That from and after the 12th day of August, 1902, the complainant still continued to be, and is now, the owner of the equitable title to all of said above described lands.

V.

Your orator further shows unto your Honors that some time prior to the month of June, 1900, and for many years prior thereto, the above-described lands in said Linn County, State and District of Oregon, were part of the public domain of the United States and subject to entry and sale in conformity with the

land laws of the United States. [4]

VI.

Your orator further shows unto your Honors that some time prior to the month of February, 1900, the above-named defendants, S. A. D. Puter, C. A. Smith, Nils O. Werner, John A. Willd, Robert F. Greacen Hubert E. Rogers and Frederick A. Kribs, together with other persons to your orator unknown, entered into a conspiracy and agreement to defraud the Government of the United States out of the title to the above-described lands, and in and by said conspiracy and agreement it was understood and agreed that the said S. A. D. Puter should solicit and procure persons to make applications and entries, together with and in addition to himself, upon the lands above described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and that the said S. A. D. Puter should, prior to procuring and obtaining such persons to file upon said lands, as aforesaid, enter into an agreement with each of said persons so to be procured and obtained to file upon said lands, as aforesaid, in and by which said agreement each of said persons so filing on said land promised and agreed that the title which he or she might acquire from the Government of the United States should inure to the benefit of the said defendant C. A. Smith, or some other of the defendants above named in this paragraph, and that as soon as such applicant should be permitted to enter said lands so to be filed upon by him or her and a certificate should issue to such applicant, showing that such

applicant had been permitted to enter said lands so filed upon and had made payment in full therefor, as required by law, then such applicant would thereupon and thereafter execute and deliver to the said defendants C. A. Smith or John A. Willd **[5]** a warranty deed, conveying said lands to the said C. A. Smith or the said John A. Willd, and would execute and deliver to the defendants Frederick A. Kribs or S. A. D. Puter the note of the applicant for $600.00, due ninety days after date and secured by mortgage upon the lands so filed upon by such applicant, and the said defendant, S. A. D. Puter should promise each of said applicants, upon behalf of himself and said defendants C. A. Smith, Frederick A. Kribs, John A. Willd, Nils O. Werner, Robert F. Greacen and Hubert E. Rogers to pay the respective applicants all expenses of filing and proof upon the lands applied for by such applicants and pay the price required to be paid the United States for said lands, all of such payments to be made by the said defendant S. A. D. Puter at the time proof and cash entries should be made.

VII.

That thereafter, on and between the 19th day of January, 1900, and the 26th day of February, 1900, pursuant to said unlawful conspiracy and agreement, hereinbefore set forth, the defendant S. A. D. Puter solicited and procured the defendants hereinafter named to make applications to purchase and enter the lands hereinafter described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States

Land Office at Roseburg, Oregon, and the said S. A. D. Puter also made an application to purchase and enter the hereinafter described lands under said Act above mentioned; and, pursuant to said unlawful conspiracy, each of said applicants to purchase and enter said lands filed a statement in duplicate, verified by the oath of such applicant, as required by law, and all of said applications were filed at the United States Land Office at Roseburg, Oregon, on the dates and **[6]** in the manner hereinafter set forth:

Timber and Stone Sworn Statement No. 770, by S. A. D. Puter, for the Northwest 1/4 of Section 20, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 797, by John L. Green, for the Northwest 1/4 of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 800, by Charles Barr, for the Southwest 1/4 of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 799, by Charles Burley, for the Southeast 1/4 of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 779, by Neal D. Dozier, for the Southwest 1/4 of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 816, by Harry Saltmarsh, for the Northwest 1/4 of Section 24, Township 14 South, Range 3 East of the Willamette

Meridian, filed February 1st, 1900.

Timber and Stone Sworn Statement No. 769, by H. C. Barr, for the Southeast 1/4 of Section 24, Township 14 South, Range 2 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 777, by John J. Jaggy, for the Southeast 1/4 of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 801, by Edward Finley, for the Northeast 1/4 of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 798, by J. S. Phillips, for the Northeast 1/4 of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 780, by Zebulin Smith, for the Northeast 1/4 of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 814, by Douglas Adkinson, for the Southwest 1/4 of Section 24, Township 14 South, Range 3 East of the Willamette Meridian, filed February 1st, 1900. [7]

Timber and Stone Sworn Statement No. 763, by Sadie E. Puter, for the Northeast 1/4 of Section 20, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 764, by Mrs. Elvira Jacobs, for the Northwest 1/4 of Section 22, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 870, by I. R. Borum, for the Southwest ¼ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 871, by Benjamin F. Kirk, for the Northeast ¼ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 869, by George L. Thompson, for the Northwest ¼ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 879, by Peter Buffington, for the Southeast ¼ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 876, by John Harrison, for Lot 1, North ½ of the Northeast ¼ of Section 30, and the Northwest ¼ of the Northwest ¼ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 872, by Thomas Wilson, for the Northwest ¼ of Section 28, Township 14 South, Range 3 East of the Willamette Meridian, filed January 22nd, 1900.

Timber and Stone Sworn Statement No. 867, by Mrs. Jennie Moulton, for the East ½ of the West ½ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 880, by Jacob W. Stillwell, for Lot 1, and the North ½ of the Northeast ¼ of Section 31; the Northwest ¼ of the

Northwest 1/4 of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 878, by Henry B. Blakely, for Lot 3 and the North 1/2 of the Southeast 1/4 of Section 30, and the Northwest 1/4 of the Southwest 1/4 of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 882, by Elam Miller, for the Northeast 1/4 of Section 31, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 875, by Frank W. **[8]** Burford, for Lot 2 and the South 1/2 of the Northeast 1/4 of Section 31, and the Southwest 1/4 of the Northwest 1/4 of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 874, by James B. Cooley, for Lot 3 and the North 1/2 of the Southeast 1/4 of Section 31, and the Northwest 1/4 of the Southwest 1/4 of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 868, by Mrs. Luella Beeman, for Lot 4 and the South 1/2 of the Southeast 1/4 of Section 31, and the Southwest 1/4 of the Southwest 1/4 of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 873, by Hugh Blakely, for Lot 4 and the South 1/2 of the

Southeast ¼ of Section 30, and the Southwest ¼ of the Southwest ¼ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

VIII.

Your orator further shows unto your Honors and alleges: That, pursuant to said unlawful conspiracy and agreement, each of said applicants to purchase and enter timber lands, mentioned and described in the last preceding paragraph of this bill, with the exception of the defendant S. A. D. Puter, prior to making or filing his or her application to purchase and enter said lands, made and entered into a contract and agreement with the said S. A. D. Puter, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants C. A. Smith, Frederick A. Kribs, Nils O. Werner, John A. Willd, Robert E. Greacen and Hubert E. Rogers, or some of them, whom the said S. A. D. Puter was then and there representing and acting for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied for to thereupon and thereafter transfer, convey and set over said lands, by warranty deed, to the said C. A. Smith or John A. Willd, and to execute and deliver to the said defendants S. A. D. Puter or Frederick A. Kribs the promissory note of such applicant, payable ninety days after date, and secured [9] by a mortgage upon the lands so applied for and filed upon, and the said defendant S. A. D. Puter, prior to making his said application and entry, hereinbefore mentioned, entered into an agreement with the said defendants C. A. Smith and

Frederick A. Kribs, in and by which the said S. A. D. Puter promised and agreed, upon being permitted to enter said land so applied for and filed upon by him, to transfer, convey and set over said lands by warranty deed to the said defendants C. A. Smith or John A. Willd; and in consideration of the foregoing agreements made by such applicants, except the said S. A. D. Puter, the said S. A. D. Puter promised and agreed to pay each of said applicants the sum of $100.00, and pay all the expenses of filing and making final proof upon, together with the purchase price of the lands applied for by each of said applicants.

And your orator further shows unto your Honors and alleges: That each of said applicants hereinbefore mentioned and described, and upon the dates hereinbefore set forth, filed a written statement, in duplicate, which is hereinbefore designated as "Timber and Stone Sworn Statement," in which said written statements each of said applicants designated by legal subdivision the particular tract of land he or she desired to purchase, and set forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited; contained no mining or other improvements, nor, as such applicant verily believed, any valuable deposit of gold, silver, cinnabar, copper or coal, and that such applicant had made no other application under said Act, and that he or she did not apply to purchase the land above described on speculation, but in good faith to appropriate it to his or her own exclusive use and benefit, and that he or she had not directly or indirectly made any agreement in any way or manner with any person or persons whomsoever, by which the title which he or

she might acquire from the [10] Government of the United States should inure to the benefit of any person except himself or herself, which said statement of each of said applicants was verified by the oath of the respective applicants before the Register or Receiver of the said Land Office at Roseburg, Oregon.

IX.

Your orator further shows unto your Honors and alleges: That upon the filing of said statements, as hereinbefore set forth, the Register of said United States Land Office, at Roseburg, Oregon, posted a notice of each of said applications, as required by law, and furnished each of such applicants a copy of such notice for publication, and the said defendant S. A. D. Puter, pursuant to said unlawful conspiracy and agreement hereinbefore mentioned, caused each of said notices to be duly and regularly published in a newspaper, as required by law, and after the expiration of such publication the said defendant S. A. D. Puter furnished to the Register of said La Grande Land Office satisfactory evidence that said notice of the application of each of said applicants had been duly published in a newspaper, as required by law, and procured each of said applicants to furnish satisfactory evidence to said Register that the said land included in each of said applications was unfit for cultivation and valuable chiefly for its timber, and that said land was unoccupied and without improvements, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal; and upon the submission of said evidence and proof so furnished and offered, and notwithstanding

the facts as hereinbefore set forth, the officers of the said United States Land Office at Roseburg, Oregon, being ignorant thereof and having no means of knowing or ascertaining the same, **[11]** did receive from each of said applicants the sum of $400.00, as payment for the lands described in said respective applications, under the said Act of Congress of June 3d, 1878, at the rate of $2.50 per acre, and permitted each of said applicants to enter the lands described in his or her respective applications, and issued to each of said applicants a certificate to the effect that such applicant had purchased the land described therein and had made payment in full therefor, as required by law, which said entries, payments and certificates were permitted, made and issued on the dates and in the manner following, to wit:

FINAL CERTIFICATE.

Number.	Name.	Date.
8168	S. A. D. Puter,	April 18th, 1900.
8170	John L. Green,	April 18th, 1900.
8171	Thomas Wilson,	April 18th, 1900.
8172	Charles Barr,	April 18th, 1900.
8173	Charles Burley,	April 18th, 1900.
8174	Neal D. Dozier,	April 18th, 1900.
8176	Harry Saltmarsh,	April 18th, 1900.
8177	Harry C. Barr,	April 18th, 1900.
8178	Edward Finley,	April 18th, 1900.
8179	John J. Jaggy,	April 18th, 1900.
8180	J. S. Phillips,	April 18th, 1900.
8181	Zebulin Smith,	April 18th, 1900.
8182	Douglas Adkinson,	April 18th, 1900.
8183	Sadie E. Puter,	April 19th, 1900.
8186	Mrs. Elvira Jacobs,	April 20th, 1900.

Number.	Name.	Date.
8231	Isaac R. Borum,	May 16th, 1900.
8232	Benjamin F. Kirk,	May 16th, 1900.
8233	George L. Thompson,	May 16th, 1900.
8234	Peter Buffington,	May 16th, 1900.
[12]		
8235	John Harrison,	May 16th, 1900.
8236	Mrs. Jennie Moulton,	May 16th, 1900.
8239	Jacob W. Stillwell,	May 16th, 1900.
8240	Luella Beeman,	May 16th, 1900.
8241	Henry B. Blakely,	May 16th, 1900.
8242	Hugh Blakely,	May 16th, 1900.
8243	Elam Miller,	May 16th, 1900.
8244	Frank W. Burford,	May 16th, 1900.
8238	James B. Cooley,	May 16th, 1900.

X.

And your orator further shows unto your Honors, that pursuant to said unlawful conspiracy to defraud the United States out of its said lands, as aforesaid, and pursuant to said unlawful agreements entered into by the said defendant S. A. D. Puter with each of said applicants prior to making and filing applications for the purchase of the lands hereinbefore described, the said S. A. D. Puter, at the time each of said applicants made proof before the officers of the United States Land Office at Roseburg, Oregon, as aforesaid, paid and advanced all the expenses and fees of each of said applicants and their respective witnesses, and paid, advanced, and furnished the purchase money for the lands included in the application of each of said applicants; and thereupon each of said applicants executed and delivered to the defendant John A. Willd a warranty deed purporting

to transfer, convey and set over unto the said defendant John A. Willd the title to the lands included and described in their respective applications and entries; and each of said applicants then and there executed and delivered to the defendant Frederick A. Kribs a pretended mortgage upon the said lands included in their respective entries and applications, purporting to secure the sum of $600.00, payable **[13]** ninety days after the date of such mortgage; and in each of said deeds and mortgages the applicants who were married were joined by their respective wives or husbands.

XI.

And your orator further shows unto your Honors and alleges, that each of the applications and entries hereinbefore mentioned was made by the respective applicants and entrymen and entrywomen as agents of and for the use and benefit of the said defendants S. A. D. Puter, C. A. Smith, Frederick A. Kribs, John A. Willd, Robert E. Greacen, Hubert E. Rogers, and Nils O. Werner, or some of them.

XII.

And your orator further shows unto your Honors and alleges, that thereafter the land officers of said United States Land Office at Roseburg, Oregon, transmitted to the General Land Office the papers and testimony relating to each of said applications, and thereafter, notwithstanding the facts hereinbefore set forth, the President of the United States and the officers of the Department of the Interior and the General Land Office of the United States of America, being ignorant thereof and having no means of ascertaining the same, did, on the 12th day of

August, 1902, issue to each of said applicants to purchase and enter timber lands, as hereinbefore set forth, a patent purporting to convey to the respective applicants the land described in their respective applications.

XIII.

And your orator further shows unto your Honors and alleges; that by reason of the facts hereinbefore stated, a fraud has been perpetrated on the complainant and it has been deprived of the legal title to the land hereinbefore described, contrary to law and good conscience, and that the officers of **[14]** the United States Land Office at Roseburg, Oregon, and of the Department of the Interior and the General Land Office of the United States, and the President of the United States had no knowledge of the facts as hereinbefore set out, and did not discover such facts until a long time after the issuance of such patents and just prior to the institution of this, and by the exercise of reasonable diligence could not have discovered these facts any sooner.

XIV.

And your orator further shows unto your Honors that he is informed that the defendant Nils O. Werner claims to have some interest in all said lands patented to the defendants as hereinbefore set forth, but your orator avers that the said Nils O. Werner acquired his alleged title or interest in said lands through successive deeds of release and quitclaim executed therefor by the following named defendants in the order and at the dates herein respectively named, to wit: John A. Willd and wife to Robert F. Greacen, November 2d, 1900; Robert F. Greacen to Hubert E.

Rogers, February 11th, 1901; Hubert E. Rogers and wife to Nils O. Werner, December 21st, 1904. And your orator charges and avers that in each and every instance respectively, and as to each and every party in this paragraph mentioned, he took and received said respective deeds with full notice of the fraud so perpetrated upon your orator, as alleged in this bill of complaint, and without having paid or given any consideration therefor, and for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore mentioned, and to prevent the United States from recovering said lands, and that each of such purchases and deeds is void in equity and should be so declared in favor of the United States and any purchase or pretended purchase or incumbrance or lien, or pretended incumbrance or apparent lien **[15]** alleged to be existing at law or in equity thereon upon such lands or any portion thereof should be declared void by the decree of this Honorable Court.

XV.

And your orator further shows unto your Honors that he is informed that the defendant, the First Trust and Savings Bank of Illinois, claims to have some interest in said lands patented to the defendants, as hereinbefore set forth, but your orator avers that whatever interest or claim the said First Trust and Savings Bank of Illinois has, or claims to have, in said lands is subject and inferior to the rights of complainant therein, and that the said First Trust and Savings Bank of Illinois procured and received whatever interest or claim it has in or to said lands with full notice of the fraud so perpetrated upon

the complainant, as alleged in this bill of complaint, and without having paid or given any consideration therefor, and for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore mentioned, and to prevent the United States from recovering said lands, and that such claim or right of the First Trust and Savings Bank of Illinois is void in equity, and should be so declared in favor of the United States, and any pretended encumbrance or lien alleged to be existing in favor of the said First Trust and Savings Bank of Illinois should be declared void by the decree of this Honorable Court.

XVI.

And your orator further avers that the false and fraudulent representations made by the defendants, as hereinbefore set forth, were all made with the intent to deceive and defraud the United States out of the use of, title to and possession of the lands hereinbefore described, and that your complainant relied upon said false and fraudulent representations so made as aforesaid, and by reason of such false and fraudulent **[16]** representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be cancelled and annulled and held for naught.

For as much, therefore, as your orator is without adequate remedy in the premises, except in a court of equity, where such matters are properly relievable, and to the end therefore that your orator may have that relief which may only be obtained in a court of equity, and in this court having jurisdiction thereof

under the aforesaid facts, as alleged, and that the defendants and each of them may answer the premises and show if he or she can why your complainant should not have the relief herein prayed for, your orator prays and requests of your Honors to grant unto your complainant a writ of subpoena to be directed to said defendants, and each of them, hereinbefore named in the title to this bill, commanding him or her, at a day certain, and under a certain penalty therein to be limited, to personally appear before this Honorable Court and then and there full, true, direct and perfect answer make to all and singular the premises, but not under oath or affirmation, the benefit whereof is hereby expressly waived and to stand, perform and abide by such order and decree as may be made against them in the premises, as to your Honors shall seem meet and agreeable to equity, and that your complainant may have such further and other relief in the premises as the nature of the circumstances may require, and particularly that your orator may have a decree cancelling and annulling and setting aside each and all of said patents for the lands hereinbefore mentioned and described, and cancelling, annulling and setting aside all liens and encumbrances and pretended liens and encumbrances upon said lands, and divesting the defendants, and each of them, of and from all right, title, estate in law [17] or equity and of all claim or interest of whatsoever kind or nature that they or any of them may assert thereto, and in and about the premises may make such further orders or decree as may be meet and agreeable to equity and that your

complainant may have its costs in this suit.

CHARLES J. BONAPARTE,
Attorney General of the United States.
JOHN McCOURT,
United States Attorney for the District of Oregon.

United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn on oath, depose and say, that I am United States Attorney for the District of Oregon, and that the facts set forth in the foregoing bill of complaint are true as I verily believe.

JOHN McCOURT.

Subscribed and sworn to before me this 25 day of May, 1908.

[Seal] WALTER H. EVANS,
Notary Public for Oregon.

Bill of Complaint. Filed May 25, 1908. G. H. Marsh, Clerk. **[18]**

[Marshal's Return to Subpoena ad Respondendum.]

District of Oregon,—ss.

I hereby certify and return, that on the 25th day of May, 1908, I received the within Writ and that after diligent search, and inquiry from F. A. Kribs & S. A. D. Puter, I am unable to find the within-named defendants Nils O. Werner, Eva C. Werner, The First Trust & Savings Bank of Illinois, Robt. E. Gracen, Hubert E. Rogers, John A. Willd, C. A. Smith, Chas. Burley, Harry C. Barr, John J. Jaggy, Zebulin Smith, Douglas Adkinson, (dead), Sadie E. Puter, Elvira S. Jacobs, Isaac R. Borum, Jennie Moulton,

Elam Miller, Frank W. Burford, Luella Beeman, Hugh Blakely, Geo. I. Thomas, within my district.

CHARLES J. REED,
United States Marshal.

By ———————— [20]

(Title of Court and Cause.)

Subpoena ad Respondendum.

The President of the United States of America, to Nils O. Werner and Eva C. Werner, His Wife, The First Trust and Savings Bank of Illinois, Robert E. Greacen, Hubert E. Rogers, John A. Willd, C. A. Smith, Frederick A. Kribs, Stephen A. D. Puter, John L. Green, Thomas Wilson, Charles Barr, Charles Burley, Neal D. Dozier, Harry Saltmarsh, Harry C. Barr, Edward Finley, John J. Jaggy, J. S. Phillips, Zebulin Smith, Douglas Adkinson, Sadie E. Puter, Elvira S. Jacobs, Isaac R. Borum, Benjamin F. Kirk, George I. Thomas, Peter Buffington, John Harrison, Jennie Moulton, Jacob W. Stillwell, Henry Blakely, Elam Miller, Frank W. Burford, James B. Cooley, Luella Beeman, and Hugh Blakely, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the city of Portland, in said District, on the first Monday of July next, which will be the 6th day of July, A. D. 1908, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said court, wherein The United States of America is complainant, and you are defendants, and further to do and receive what our said Circuit Court shall consider in

this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said District, or your deputy, to make due service of this our writ of subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 25th day of May, in the year of our Lord one thousand nine hundred and eight, and of the Independence of the United States the one hundred and thirty-second.

[Seal] (Signed) G. H. MARSH,
Clerk.

By ————————,
Deputy Clerk.

MEMORANDUM PURSUANT TO EQUITY RULE NO. 12 OF THE SUPREME COURT OF THE UNITED STATES.

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso.* **[21]**

[Endorsed]: Doc. 396, p. 46. No. 3320. In the Circuit Court of the United States for the District of Oregon. In Equity. The United States vs. Nils O. Werner et al. Subpoena ad Respondendum. Returned and filed July 20, 1908. (Signed) G. H. Marsh, Clerk. By ————, Deputy Clerk.

And afterwards, to wit, on the 27th day of July, 1908, there was duly filed in said court a motion for order directing certain defendants to appear and plead, in words and figures as follows, to wit: [24]

[Motion for Order Directing Nils O. Werner et al. to Appear, etc.]

(Title of Court and Cause.)

Comes now the United States of America, the above-named complainant, by John McCourt, its attorney in and for the District of Oregon, and, based on the bill of complaint and affidavit filed herein, moves this Honorable Court to make and cause to be entered of record in this court an order directing Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank W. Burford, defendants, to appear, plead, answer or demur to complainant's bill of complaint filed herein by a day certain to be designated in such order.

JOHN McCOURT,
United States District Attorney.

Filed July 27, 1908. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. [25]

And afterwards, to wit, on the 27th day of July, 1908, there was duly filed in said court an affidavit in support of motion for order for certain defendants to appear and plead, in words and figures as follows, to wit: [26]

[Affidavit in Support of Motion for Order Directing Nils O. Werner et al. to Appear, etc.]

(Title of Court and Cause.)
United States of America,
District and State of Oregon,—ss.

I, John McCourt, being first duly sworn, depose and say: That I am United States Attorney for the District of Oregon, and that, on the 25th day of May, 1908, a bill of complaint was filed in the above-entitled court, in the above-entitled suit, wherein complainant seeks to cancel, annul and set aside the patents to certain lands situate in the State and District of Oregon, and described in the above-mentioned bill of complaint, which said patents had heretofore been issued by complainant to the defendants Stephen A. D. Puter, John L. Green, Thomas Wilson, Charles Barr, Charles Burley, Neal D. Dozier, Harry Saltmarsh, Harry C. Barr, Edward Finley, John J. Jaggy, J. S. Phillips, Zebulin Smith, Douglas Adkinson, Sadie E. Puter, Elvira S. Jacobs, Isaac R. Borum, Benjamin F. Kirk, George L. [27] Thompson, Peter Buffington, John Harrison, Jennie Moulton, Jacob W. Stillwell, Henry Blakely, Elam Miller, Frank W. Burford, James B. Cooley, Luella Beeman and Hugh Blakely, respectively, and in and by said bill of complaint complainant further seeks to cancel, annul and set aside all claims, rights, liens and conveyances of every nature asserted, held or made by the defendants, or any of them, in respect to or touching said lands described and set forth in said bill of complaint; that said patents to said lands, so issued to the defendants, as aforesaid, were

obtained from complainant by said defendants through fraud and false and fraudulent representations, as more particularly appears in the said bill of complaint on file herein, and to which reference is hereby made, and by such reference said bill of complaint is hereby made a part of this affidavit.

That said suit is one to enforce an equitable claim to the title to the said lands and real property described in said bill of complaint, and that the defendants Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, C. A. Smith, Sadie E. Puter, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank W. Burford, are not inhabitants or residents of the State or District of Oregon, and that none of them can be found in said State or District, and that none of said defendants has voluntarily appeared in said suit.

That on the 25th day of May, 1908, there was issued out of the above-entitled court a subpoena ad respondendum, directed against all of the defendants named in the above-entitled suit, including the defendants last above named, which said subpoena was, on the 25th day of May, 1908, delivered to and placed in the hands of the United States Marshall for the District of Oregon *fro* service upon all of said defendants **[28]** named in the above-entitled suit, including said defendants Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas

Adkinson, Jennie Moulton, and Frank W. Burford, and that on the 20th day of July, 1908, the said United States Marshall for the District of Oregon duly and regularly made return upon said *subpoena ad respondendum,* filed the same in the above-entitled court and duly and regularly certified thereon that he had made diligent search and inquiry for said defendants Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank W. Burford, and each of them, and had made inquiry of persons likely to know the whereabouts of said last-named defendants, and that he was unable to find said defendants, or either or any of them, within the District or State of Oregon; that affiant is informed and believes that the above-named defendants, C. A. Smith, John A. Willd, Nils O. Werner and Eva C. Werner, his wife, are now residents of and residing in Minneapolis, Hennepin County, Minnesota, and the said First Trust and Savings Bank of Illinois is a resident of the State of Illinois, but the particular place of residence in said State of the said First Trust and Savings Bank of Illinois is unknown to affiant; that the said defendants Hubert E. Rogers and Robert F. Greacen are now residents and are residing either in said Minneapolis, Hennepin County, State of Minnesota, or in New York County, State of New York; and that the said Sadie E. Puter is a resident of and residing in Berkeley, California; that Elvira S. Jacobs is a resident of and residing in Alameda, California; [29]

that the said Elam Miller is a resident of and residing in North Yakima, Washington; that the said Charles Burley is a resident of and is now residing in Salt Lake City, Utah; that the said Douglas Adkinson is a resident of and is now residing in Cottonwood, Idaho; that said Jennie Moulton is a resident of and is now residing in Seattle, Washington, and that the said Frank W. Burford is a resident of and is now residing in Tacoma, Washington.

That this affidavit and the motion herewith filed are made and filed for the purpose of obtaining an order of this Honorable Court directing that said defendants appear, plead, answer or demur herein by a day certain to be designated by this Honorable Court, and directing that said order be served upon said defendants, and each of them, as required by law and the rules of this court.

That affiant is informed and believes that no person is in charge of or in possession of said real property described in complainant's bill of complaint herein.

JOHN McCOURT.

Subscribed and sworn to before me this 27th day of July, 1908.

G. H. MARSH,
Clerk of the United States Court.

Filed July 27th, 1908. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. **[30]**

And afterwards, to wit, on Monday, the 27th day of July, 1908, the same being the 91st judicial day of the regular April, 1908, term of said court—Present, the Honorable CHARLES E. WOL-

VERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[31]**

[Marshal's Returns Re Service of Complaint, etc.]

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Bill of Complaint, referred to in Case #3320 on the therein-named Charles A. Smith, by handing to and leaving a true and correct copy thereof with Charles A. Smith, personally, at Minneapolis in said District on the Eleventh day of August, A. D. 1908.

(Signed) WILLIAM H. GRIMSHAW,
U. S. Marshal. **[32]**

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Order for nonresident defendants to appear and plead on the therein-named Charles A. Smith and Nils O. Werner, by handing to and leaving a true and correct copy thereof with Charles A. Smith and Nils O. Werner, each personally, at Minneapolis in said District, on the Eleventh day of August, A. D. 1908.

(Signed) WILLIAM H. GRIMSHAW,
U. S. Marshal. **[33]**

RETURN ON SERVICE OF WRIT.

United States of America,
District of Minnesota,—ss.

I hereby certify and return that I served the annexed Order of Court on the therein-named Eva C. Werner, by handing to and leaving a true and correct copy thereof with Eva C. Werner, personally, at Minneapolis in said District on the Eleventh day of August, A. D. 1908.

(Signed) WILLIAM H. GRIMSHAW,
U. S. Marshal.
By Leone Rich,
Deputy. **[34]**

[Order Directing Nils O. Werner et al. to Appear, etc.]

(Title of Court and Cause.)

Now at this time comes on regularly to be heard the application of John McCourt, United States Attorney for the District of Oregon, appearing on behalf of complainant herein, for an order directing absent defendants Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank Burford, defendants, to appear anl plead, answer or demur herein, by a day certain to be designated by the Court. **[35]**

And it appearing to the Court that this suit is commenced by the United States of America, complain-

ant, to enforce an equitable claim to real property situated in the State and District of Oregon, the said suit being one to cancel and annul the patents to certain lands, which had heretofore been issued by complainant to defendants Stephen A. D. Puter, John L. Green, Thomas Wilson, Charles Barr, Charles Burley, Neal D. Dozier, Harry Saltmarsh, Harry C. Barr, Edward Finley, John J. Jaggy, J. S. Phillips, Zebulin Smith, Douglas Adkinson, Sadie E. Puter, Elvira S. Jacobs, Isaac R. Borum, Benjamin F. Kirk, George L. Thompson, Peter Buffington, John Harrison, Jennie Moulton, Jacob W. Stillwell, Henry Blakely, Elam Miller, Frank W. Burford, James E. Cooley, Luella Beeman, and Hugh Blakely, and that said Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank Burford, defendants herein named, are not inhabitants of the District of Oregon, nor can they, or either of them, be found in the State or District of Oregon, nor has either of them voluntarily appeared in and to said suit.

And the Court being of the opinion that said application should be granted;

IT IS HEREBY ORDERED that each of said defendants, Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson,

Jennie Moulton and Frank Burford shall appear, plead, answer or demur to the bill of complaint herein within sixty days respectively from the date upon which this said order may be served upon the defendants so required to appear, plead, answer or demur, at the term of this court which may then be in session at the courtroom thereof, in the city of Portland, County of Multnomah and State of Oregon. **[36]**

That certified copies of this order, prepared by the clerk of the court, under the seal of the Court, be served on the said Nils O. Werner, Eva C. Werner, his wife, The First Trust and Savings Bank of Illinois, Robert F. Greacen, Hubert E. Rogers, John A. Willd, Sadie E. Puter, C. A. Smith, Elvira S. Jacobs, Elam Miller, Charles Burley, Douglas Adkinson, Jennie Moulton and Frank Burford, defendants; by a United States Marshal for any District in the United States where said defendants may be found, and that there be served upon said defendant, C. A. Smith, with said certified copy of this order, a copy of plaintiff's bill, certified as provided by the Rules of this Court.

Done in open court in the City of Portland, State of Oregon, on the 28th day of July, 1908.

CHAS. E. WOLVERTON,
Judge.

Filed July 27, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[37]**

And afterwards, to wit, on the 5th day of September, 1908, there was duly filed in said court a joint and several plea of Frederick A. Kribs et

al., to Bill of Complaint, in words and figures as follows, to wit: **[38]**

[Joint and Several Plea of Frederick A. Kribs et al. to Complaint.]

(Title of Court and Cause.)

The joint and several plea of Frederick A. Kribs, Thomas Wilson, Charles Barr, Neal D. Dozier, Harry Saltmarsh, Edward Finley, J. S. Phillips, Zebulin Smith, Benjamin E. Kirk, George L. Thompson (in the bill called George I. Thomas), Peter Buffington, John Harrison, Jacob W. Stillwell, Harry B. Blakely and James B. Cooley, defendants, to the bill of complaint of the complainant.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters and things in said bill of complaint contained to be true, in manner and form as the same are therein set forth, for plea nevertheless to said bill aver and say that on or about the 31st day of May, A. D. 1906, a corporation was duly organized and created under the **[39]** general laws of the State of Minnesota by the name of Linn and Lane Timber Company, which said corporation by virtue of its charter and the general laws of said State of Minnesota has at all times had, and it now has, power and authority to buy, hold and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, and which said corporation has at all times had, and now has, its principal place of business at the City of Minneapolis in said State of Minnesota, and it has at all times had, and it now has, officers and directors who reside at said City of Minneapolis. That on or

about the 25th day of June, A. D. 1906, said corporation executed, acknowledged and caused to be filed and recorded in the office of the Secretary of State for said State of Oregon, a power of attorney wherein and whereby one Frederick A. Kribs, a citizen of the United States, and a citizen and resident of said State of Oregon, was constituted and appointed its attorney in fact and agent, with such power and authority that lawful and valid service of all writs, processes or summons in any action, suit or proceeding against said corporation in any of the courts of said State of Oregon, or in any court of the United States in said State of Oregon, might and could thenceforth at all times be made upon said corporation by serving the same upon said Kribs as said attorney in fact and agent. That on said 25th day of June, 1906, said corporation was authorized to engage in business within said State of Oregon, in accordance with the provisions of an Act of the Legislative Assembly of said State, approved February 16, 1903, and entitled "An Act to Provide for the Licensing of Domestic Corporations and Foreign Corporations, etc.," and said corporation has ever since said date been authorized, and it is now authorized, to buy, hold and sell timber and other lands **[40]** and tenements in said State, and ever since said date the said Frederick A. Kribs has continued to be, and he now is, the attorney in fact and agent of said corporation, for the purpose and with the power and authority aforesaid; and ever since said date the said Frederick A. Kribs has resided, and he now resides, at the City of Portland, in said State, and his place of business has ever since said date been, and

it now is, Number 330 Chamber of Commerce Building, in said City of Portland.

These defendants further aver and say that on and prior to the 4th day of June, A. D. 1906, by virtue of divers mesne deeds and conveyances from the several entrymen in said bill of complaint named, Charles A. Smith and Nels O. Werner became and were seized and possessed of the right, title, interest and estate which complainant granted in and to all the lands described in said bill of complaint to the several entrymen in said bill named by the several patents in said bill mentioned and described; that while respectively so seized and possessed of said right, title, interest and estate in said lands, the said Charles A. Smith, by a deed dated the 4th day of June, A. D. 1906, and duly executed by himself and Johanna A. Smith, his wife, and the said Nels O. Werner, by a deed dated the 15th day of August, A. D. 1907, and duly executed by himself and Eva C. Werner, his wife (which said deeds are recorded in the office of the Recorder of Conveyances for the County of Linn, in said State of Oregon), granted, bargained, sold and conveyed to the said Linn and Lane Timber Company all the right, title, interest and estate in and to all the lands described in said bill of which said Charles A. Smith and said Nels O. Werner were then so respectively seized and possessed; that both said deeds were executed and delivered to said company a long time before the said bill of complaint was filed, to wit, before the 16th day of August, A. D. 1907, and the said Linn and Lane Timber Company has ever since been, and it now is, **[41]** by virtue of said deeds, the owner of all the right, title, interest and

estate which complainant granted to the several entrymen named in said bill of complaint by the several patents in said bill mentioned and described, and that ever since said 15th day of August, 1907, said company has claimed, and it now claims, to be seized of an estate in fee simple, absolute, in and to all said lands by virtue of the patents and deeds aforesaid. That by reason of the right, title, interest and estate in and to said lands so acquired, held and claimed by said company, it, the said Linn and Lane Timber Company, is an indispensable party defendant herein, and for as much as the complainant has not made said company a party to said bill of complaint, said bill is deficient to answer the purposes of complete justice.

All of which matters and things these defendants do aver to be true and plead the same in abatement of complainant's said bill, and pray judgment of the Court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

L. H. TARPLEY,
W. W. BANKS,
PERCY R. KELLY,
ALBERT H. TANNER,
Of Counsel for Said Defendants.

I certify that in my opinion the foregoing plea is well founded in point of law.

L. H. TARPLEY,
Of Counsel for Said Defendants. **[42]**

State of Oregon,
County of Multnomah,—ss.

Frederick A. Kribs, one of the defendants in the above-entitled cause, being duly sworn, says, that the foregoing plea is true in point of fact, and is not interposed for delay.

FREDERICK A. KRIBS.

Subscribed and sworn to before me this 5th day of September, A. D. 1908.

[Seal] L. H. TARPLEY,
Notary Public for Oregon.

Plea of Frederick A. Kribs et al. Filed Sept. 5, 1908. G. H. Marsh, Clerk. **[43]**

And afterwards, to wit, on Monday, the 5th day of October, 1908, the same being the 1st judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[44]**

[Order Granting Fifteen Days Within Which to Serve and File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, on this 5th day of October, 1908, the above-entitled cause coming on to be heard upon the motion of John McCourt, United States Attorney for the District of Oregon, for fifteen days from this date within which to file an amended bill, or supplemental bill herein, as he may determine proper;

And it appearing to the Court that the defendants Frederick A. Kribs, Thomas Wilson, Charles Barr, Neal D. Dozier, Harry Saltmarsh, Edward Finley, J. S. Phillips, Zebulin Smith, Benjamin F. Kirk, George L. Thompson (in the bill called George I. Thomas), Peter Buffington, John Harrison, Jacob W. Stillwell, Harry B. Blakely, and James B. Cooley, defendants, heretofore interposed a plea herein alleging that the Linn & Lane Timber Company, a corporation, claims **[45]** some right, title or interest in and to the subject matter of this suit and is an indispensable party herein, and the said John McCourt representing that complainant desires to amend his said bill or file a supplemental bill herein bringing in said Linn & Lane Timber Company as a party defendant but without admitting any of the allegations of said plea of said defendants herein to be true, except that conveyances have been placed of record in Linn County, Oregon, since the commencement of this suit purporting to convey the said lands in controversy herein to the said Linn & Lane Timber Company;

And it further appearing to the Court that the application of said complainants shall be allowed in order that whatever rights the said Linn & Lane Timber Company has in said lands, if any, may be litigated in this suit.

Therefore, IT IS ORDERED that complainant have fifteen days from this date within which to serve and file an amended or supplemental bill herein as may be determined upon by it.

CHARLES E. WOLVERTON,
Judge.

Order. Filed October 5, 1908. G. H. Marsh, Clerk. By J. W. Marsh, Deputy. **[46]**

And afterwards, to wit, on the 8th day of October, 1908, there was duly filed in said court a plea of Nils O. Werner and C. A. Smith to the Bill of Complaint, in words and figures as follows, to wit: **[47]**

[Joint and Several Plea of Nils O. Werner and Charles A. Smith to Bill.]

(Title of Court and Cause.)

The joint and several plea of Nils O. Werner and Charles A. Smith (in the bill called C. A. Smith) to the bill of complaint of the complainant.

These defendants, by protestation, not confessing or acknowledging all or any part of the matters and things in said bill of complaint contained to be true, in manner and form as the same are therein set forth, for plea nevertheless to said bill aver and say that on or about the 31st day of May, A. D. 1906, a corporation was duly organized and created under the general laws of the State of Minnesota by the name of Linn and Lane Timber Company, which said corporation by virtue of its charter and the general laws of said State of Minnesota has at all times had, and it now has, power and authority to buy, hold and sell timber and **[48]** other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same; and which said corporation has at all times had, and now has, its principal place of business at the City of Minneapolis in said State of Minnesota,

and it has at all times had, and it now has, officers and directors who reside at said City of Minneapolis. That on or about the 25th day of June, A. D. 1906, said corporation executed, acknowledged and caused to be filed and recorded in the office of the Secretary of State for said State of Oregon, a power of attorney wherein and whereby one Frederick A. Kribs, a citizen of the United States, and a citizen and resident of said State of Oregon, was constituted and appointed its attorney in fact and agent, with such power and authority that lawful and valid service of all writs, processes or summons in any action, suit or proceeding against said corporation in any of the Courts of said State of Oregon, or in any Court of the United States in said State of Oregon, might and could thenceforth at all times be made upon said corporation by serving the same upon said Kribs as said attorney in fact and agent. That on said 25th day of June, 1906, said corporation was authorized to engage in business within said State of Oregon, in accordance with the provisions of an Act of the Legislative Assembly of said State, approved February 16, 1903, and entitled "An Act to Provide for the Licensing of Domestic Corporations and Foreign Corporations," etc., and said corporation has ever since said date been authorized, and it is now authorized, to buy, hold and sell timber and other lands and tenements in said State, and ever since said date the said Frederick A. Kribs has continued to be, and he now is, the attorney in fact and agent of said corporation, for the purpose and with the power and authority aforesaid; and ever since said date the said

Frederick A. Kribs has resided, and he now resides, at the City of Portland, in said State, and his place of business has ever since said date been, and it now is, Number 330 Chamber **[49]** of Commerce Building, in said City of Portland.

These defendants further aver and say that on and prior to the 4th day of June, A. D. 1906, by virtue of divers mesne deeds and conveyances from the several entrymen in said bill of complaint named, Charles A. Smith and Nils O. Werner became and were seized and possessed of the right, title, interest and estate which complainant granted in and to all the lands described in said bill of complaint to the several entrymen in said bill named by the several patents in said bill mentioned and described; that while respectively so seized and possessed of said right, title, interest and estate in said lands, the said Charles A. Smith, by a deed dated the 4th day of June, A. D. 1906, and duly executed by himself and Johanna A. Smith, his wife, and the said Nils O. Werner, by a deed dated the 15th day of August, A. D. 1907, and duly executed by himself and Eva C. Werner, his wife (which said deeds are recorded in the office of the Recorder of Conveyances for the County of Linn, in said State of Oregon), granted, bargained, sold and conveyed to the said Linn and Lane Timber Company all the right, title, interest and estate in and to all the lands described in said bill of which said Charles A. Smith and said Nils O. Werner were then so respectively seized and possessed; that both said deeds were executed and delivered to said Company a long time before the said

bill of complaint was filed, to wit, before the 16th day of August, A. D. 1907, and the said Linn and Lane Timber Company has ever since been, and it now is, by virtue of said deeds, the owner of all the right, title, interest and estate which complainant granted to the several entrymen named in said bill of complaint by the several patents in said bill mentioned and described, and that ever since said 15th day of August, 1907, said Company has claimed, and it now claims, to be seized of an estate in fee simple, absolute, in and **[50]** to all said lands by virtue of the patents and deeds aforesaid. That by reason of the right, title, interest and estate in and to said lands so acquired, held and claimed by said company, it, the said Linn and Lane Timber Company, is an indispensable party defendant herein, and for as much as the complainant has not made said Company a party to said bill of complaint, said bill is deficient to answer the purposes of complete justice.

All of which matters and things these defendants do aver to be true and plead the same in abatement of complainant's said bill, and pray judgment of the Court whether they shall be compelled to further answer said bill, and pray to be hence dismissed with costs.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
DOLPH, MALLORY, SIMON & GEARIN,
Of Counsel for Said Defendants.

I certify that in my opinion the foregoing plea is well founded in point of law.

A. UELAND,
Of Counsel for Said Defendants.

State of Minnesota,
County of Hennepin,—ss.

Nils O. Werner, one of the defendants in the above entitled cause, being duly sworn, says, that the foregoing plea is true in point of fact, and is not interposed for delay.

NILS O. WERNER. [51]

Subscribed and sworn to before me this 3d day of October, 1908.

[Seal] W. M. JEROME,
Notary Public, Hennepin Co., Minn.

My commission expires June 26, 1914.

Notices and copies in the above-entitled cause may be served on each of the undersigned by delivering the same to John M. Gearin, Esq., at his office in the Mohawk Building, in Portland, Oregon.

JOHN LIND,
A. UELAND,
W. M. JEROME,
Of Counsel for Said Defendants.

Service admitted Oct. 8, 1908.

JOHN McCOURT,
U. S. Attorney.

Plea of Nils O. Werner and Charles A. Smith. Filed October 8, 1908. G. H. Marsh, Clerk. [52]

And afterwards, to wit, on Monday, the 19th day of October, 1908, the same being the 13th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[53]**

[Order Allowing Ten Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, It is Ordered that the plaintiff in the above-entitled cause be, and it is hereby, allowed ten days' further time in which to file an amended Bill of Complaint or Supplemental Bill herein. **[54]**

And afterwards, to wit, on Thursday, the 29th day of October, 1908, the same being the 22d judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[55]**

[Order Allowing Five Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, It is Ordered that the plaintiff herein be, and it is hereby, allowed five days'

further time in which to file an amended Bill of Complaint or Supplemental Bill herein. **[56]**

And afterwards, to wit, on Thursday, the 5th day of November, 1908, the same being the 28th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[57]**

[Order Allowing Five Days' Further Time to File Amended or Supplemental Bill.]

(Title of Court and Cause.)

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and the defendants C. A. Smith, et al., by Mr. John M. Gearin, of counsel: Whereupon, on motion of said plaintiff, It is Ordered that said plaintiff be, and it is hereby, allowed five days' further time in which to file an amended or supplemental Bill of Complaint herein. **[58]**

And afterwards, to wit, on the 16th day of November, 1908, there was duly filed in said Court an Amended Bill of Complaint, in words and figures as follows, to wit: **[59]**

In the Circuit Court of the United States for the District of Oregon.

No. 3320.

THE UNITED STATES OF AMERICA,
Complainant,

vs.

NILS O. WERNER, and EVA C. WERNER, His Wife, THE FIRST TRUST AND SAVINGS BANK, OF ILLINOIS, LINN & LANE TIMBER COMPANY, ROBERT F. GRAECEN, HUBERT F. ROGERS, C. A. SMITH, FREDERICK A. KRIBS, STEPHEN A. D. PUTER, JOHN L. GREEN, THOMAS WILSON, CHARLES BARR, CHARLES BURLEY, NEAL D. DOZIER, HARRY SALTMARSH, EDWARD FINLEY, J. S. PHILLIPS, ZEBULIN SMITH, DOUGLAS ADKINSON, SADIE E. PUTER, ELVIRA S. JACOBS, ISAAC R. BORUM, BENJAMIN F. KIRK, GEORGE I. THOMAS, PETER BUFFINGTON, JOHN HARRISON, JENNIE MOULTON, JACOB W. STILLWELL, HENRY BLAKELY, ELAM MILLER, FRANK W. BURFORD, JAMES B. COOLEY, LUELLA BEEMAN and HUGH BLAKELY,
Defendants.

Amended Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States of America, for the District of Oregon, in Chancery Sitting:

Your orator, the United States of America, by and under the authority and direction of the Attorney

General of the United States, and by leave of Court first had and obtained, brings this its amended bill in equity against the above-named defendants, and each of them, and thereupon your orator complains of said defendants respectively, and shows unto your Honors:

I.

That the First Trust and Savings Bank of Illinois was at all the dates and times hereinafter mentioned, and is now, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois. **[60]**

[*II.*]

That the defendants Nils O. Werner and Eva C. Werner are, and were at all the times hereinafter mentioned, husband and wife.

III.

That the complainant was until the dates and times herein mentioned, the owner of the following described lands and premises, situate in the County of Linn, State and District of Oregon, and had the full legal title thereto at all said dates and times prior to the 12th day of August, 1902, which said lands were until the times herein mentioned, part of the public domain of the United States of America, and are particularly bounded and described as follows, to wit:

"The South half of Section 24, Township 14 South, Range 2 East of the Willamette Meridian; all of Section 14; north half of Section 20; northwest quarter of southeast quarter of Section 22; west half of Section 24; northwest quarter of Section 28; northeast quarter of Section 31; and all of Sections 34 and 35; in township 14 south, range 3 east of the Willamette Meridian; the northwest quarter of the southeast

quarter of Section 18; the northeast quarter of the northeast quarter of Section 25, the southwest quarter of the southeast quarter of Section 28; west half of the west half of Section 29, all of Sections 30 and 31; and the west half of Section 32; all in Township 14 South, Range 4 east of the Willamette Meridian, situate in the Roseburg Land District of the State of Oregon."

IV.

That from and after the 12th day of August, 1902, the complainant still continued to be, and is now, the owner of the equitable title to all of said above described lands.

V.

Your orator further shows unto your Honors that some time prior to the month of June, 1900, and for many years prior thereto, the above described lands in said Linn County, State and District of Oregon, were part of the public domain of the United States and subject to United States.

VI.

Your orator further shows unto your Honors that [61] some time prior to the month of February, 1900, the above-named defendants, S. A. D. Puter, C. A. Smith, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers, Frederick A. Kribs, and John A. Willd, since deceased, together with other persons to your orator unknown, entered into a conspiracy and agreement to defraud the Government of the United States out of the title to the above described lands, and in and by said conspiracy and agreement it was understood and agreed that the said S. A. D. Puter should solicit and procure persons to make applications and entries, together with and in addition to

himself, upon the lands above described, under the Act of Congress of June 3, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory, at the United States Land Office at Roseburg, Oregon, and that the said S. A. D. Puter should, prior to procuring and obtaining such persons to file upon said lands, as aforesaid, enter into an agreement with each of said persons so to be procured and obtained to file upon said lands, as aforesaid, in and by which said agreement each of said persons so filing on said land promised and agreed that the title which he or she might acquire from the Government of the United States should inure to the benefit of the said defendant C. A. Smith, or some other of the defendants above named in this paragraph, and that as soon as such applicant should be permitted to enter said lands so to be filed upon by him or her and a certificate should issue to such applicant, showing that such applicant had been permitted to enter said lands so filed upon and had made payment in full therefor, as required by law, then such applicant would thereupon and thereafter execute and deliver to the said defendant C. A. Smith or John A. Willd, since deceased, a warranty deed, conveying said lands to the said C. A. Smith or the said John A. Willd, since deceased, and would execute and deliver to the defendants **[62]** Frederick A. Kribs or S. A. D. Puter the note of the applicant for $600.00, due ninety days after date and secured by mortgage upon the lands so filed upon by such applicant, and the said defendant, S. A. D. Puter, should promise each of said applicants, upon behalf of himself and said defendants C. A. Smith, Frederick A. Kribs, Nils

O. Werner, Robert F. Greacen and Hubert F. Rogers, and said John A. Willd, since deceased, to pay the respective applicants all expenses of filing and proof upon the lands applied for by such applicants and pay the price required to be paid the United States for said lands, all of such payments to be made by the said defendant, S. A. D. Puter at the time proof and cash entries should be made.

VII.

That thereafter, on and between the 19th day of January, 1900, and the 26th day of February, 1900, pursuant to said unlawful conspiracy and agreement, hereinbefore set forth, the defendant, S. A. D. Puter solicited and procured the defendants hereinafter named together with Harry C. Barr and John J. Jaggy, each since deceased, to make applications to purchase and enter the lands hereinafter described, under the Act of Congress of June 3d, 1878, providing for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory, at the United States Land Office at Roseburg, Oregon, and the said S. A. D. Puter also made an application to purchase and enter the hereinafter described lands under said Act above mentioned; and, pursuant to said unlawful conspiracy, each of said applicants to purchase and enter said lands filed a statement in duplicate, verified by the oath of such applicant, as required by law, and all of said applications were filed at the United States Land Office at Roseburg, Oregon, on the dates and in the manner hereinafter [63] set forth:

Timber and Stone Sworn Statement No. 770, by S. A. D. Puter, for the Northwest ¼ of Section 20,

Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 797, by John L. Green, for the Northwest 1/4 of Section 35, Township 14, South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 800, by Charles Barr, for the Southwest 1/4 of Section 35, Township 14 South, Range 3 East, of the Willamette Meridian, filed January 21st, 1900.

Timber and Stone Sworn Statement No. 799, by Charles Burley, for the Southeast 1/4 of Section 35, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 799, by Neal D. Dozier, for the Southwest 1/4 of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 816, by Harry Saltmarsh, for the Northwest 1/4 of Section 24, Township 14 South, Range 3 East of the Willamette Meridian, filed February 1st, 1900.

Timber and Stone Sworn Statement No. 769, by H. C. Barr, for the Southeast 1/4 of Section 24, Township 14 South, Range 2 East of the Willamette Meridian, filed January 18th, 1900.

Timber and Stone Sworn Statement No. 777, by John J. Jaggy, for the Southeast 1/4 of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 801, by Edward Finley, for the Northeast 1/4 of Section 35, Township 14 South, Range 3 East of the Willamette

Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 798, by J. S. Phillips, for the Northeast ¼ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 31st, 1900.

Timber and Stone Sworn Statement No. 780, by Zebulin Smith, for the Northeast ¼ of Section 34, Township 14 South, Range 3 East of the Willamette Meridian, filed January 20th, 1900.

Timber and Stone Sworn Statement No. 814, by Douglas Adkinson, for the Southwest ¼ of Section 24, Township 14 South, Range 3 East of the Willamette Meridian, filed February 1st, 1900. **[64]**

Timber and Stone Sworn Statement No. 763, by Sadie E. Puter, for the Northeast ¼ of Section 20, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 764, by Mrs. Elvira Jacobs for the Northwest ¼ of Section 22, Township 14 South, Range 3 East of the Willamette Meridian, filed January 19th, 1900.

Timber and Stone Sworn Statement No. 870, by I. R. Borum for the Southwest ¼ of Section 14, Township 14, South, Range 3 East of the Willamette Meridian, filed Feb. 26, 1900.

Timber and Stone Sworn Statement No. 871, by Benjamin F. Kirk for the Northeast ¼ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 869, by George L. Thompson for the Northwest ¼ of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 879, by Peter Buffington for the Southeast 1/4 of Section 14, Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 876, by John Harrison for Lot 1 and the North 1/2 of the Northeast 1/4 of Section 30, and the Northwest 1/4 of the Northwest 1/4 of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 872, by Thomas Wilson, for the Northwest 1/4 of Section 23, Township 14 South, Range 3 East of the Willamette Meridian, filed January 22nd, 1900.

Timber and Stone Sworn Statement No. 867, by Mrs. Jennie Moulton, for the East 1/2 of the West 1/2 of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement, No. 880, by Jacob W. Stillwell, for Lot 1, and the North 1/2 of the Northeast 1/4 of Section 31; the Northwest 1/4 of the Northwest 1/4 of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 878, by Henry B. Blakely, for Lot 3 and the North 1/2 of the Southeast 1/4 of Section 30, and the Northwest 1/4 of the Southwest 1/4 of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 882, by Elam Miller for the Northeast 1/4 of Section 31,

Township 14 South, Range 3 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 875, by Frank W. Burford, for Lot 2 and the South ½ of the Northeast ¼ of Section 31, and the Southwest ¼ of the Northwest **[65]** ¼ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 874, by James B. Cooley for Lot 3 and the North ½ of the Southeast ¼ of Section 31, and the Northwest ¼ of the Southwest ¼ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 868, by Mrs. Luella Beeman, for Lot 4 and the South ½ of the Southeast ¼ of Section 31, and the Southwest ¼ of the Southwest ¼ of Section 32, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

Timber and Stone Sworn Statement No. 873, by Hugh Blakely, for Lot 4 and the South ½ of the Southeast ¼ of Section 30, and the Southwest ¼ of the Southwest ¼ of Section 29, Township 14 South, Range 4 East of the Willamette Meridian, filed February 26th, 1900.

VIII.

Your orator further shows unto your Honors and alleges, that, pursuant to said unlawful conspiracy and agreement, each of said applicants to purchase and enter timber lands, mentioned and described in the last preceding paragraph of this bill, with the exception of the defendant S. A. D. Puter, prior to

making or filing his or her application to purchase and enter said lands, made and entered into a contract and agreement with the said S. A. D. Puter, whereby each of said applicants promised and agreed to purchase and enter said lands for the use and benefit of the defendants, C. A. Smith, Frederick A. Kribs, Nils O. Werner, Robert F. Greacen, Hubert E. Rogers, and John A. Willd since deceased, or some of them, whom the said S. A. D. Puter was then and there representing and acting for, and each of said applicants further agreed that upon being permitted to enter and purchase the lands so applied for to thereupon and thereafter transfer, convey and set over said lands, by warranty deed, to the said C. A. Smith or John A. Willd, since deceased, and to execute and deliver to the said defendants S. A. D. Puter or Frederick A. Kribs the promissory [66] note of such applicant, payable ninety days after date, and secured by a mortgage upon the lands so applied for and filed upon, and the said defendant S. A. D. Puter, prior to making his said application and entry, hereinbefore mentioned, entered into an agreement with said defendants, C. A. Smith and Frederick A. Kribs, in and by which the said S. A. D. Puter promised and agreed, upon being permitted to enter said land so applied for and filed upon by him, to transfer, convey and set over said lands by warranty deed to the said defendants C. A. Smith or John A. Willd, since deceased; and, in consideration of the foregoing agreements made by such applicants, except the said S. A. D. Puter, the said S. A. D. Puter promised and agreed to pay each of said applicants the sum of $100.00, and pay all the

expenses of filing and making final proof upon, together with the purchase price of the lands applied for by each of said applicants.

And your orator further shows unto your Honors and alleges, that each of said applicants hereinbefore mentioned and described, and upon the dates hereinbefore set forth, filed a written statement, in duplicate, which is hereinbefore designated as "Timber and Stone Sworn Statement," in which said written statements each of said applicants designated by legal subdivision the particular tract of land he or she desired to purchase, and set forth that the same was unfit for cultivation and valuable chiefly for its timber; that it was uninhabited; contained no mining or other improvements, nor as such applicant verily believed, any valuable deposit of gold, silver, cinnabar, copper or coal, and that such applicant had made no other application under said Act, and that he or she did not apply to purchase the land above described on speculation, but in good faith to appropriate it to his or her own exclusive use and **[67]** benefit, and that he or she had not directly or indirectly made any agreement in any way or manner with any person or persons whomsoever, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any person except himself or herself, which said statement of each of said applicants was verified by the oath of the respective applicants before the Register or Receiver of the said Land Office at Roseburg, Oregon.

IX.

Your orator further shows unto your Honors and

alleges, that upon the filing of said statements, as hereinbefore set forth, the Register of said United States Land Office, at Roseburg, Oregon, posted a notice of each of said applications, as required by law, and furnished each of such applicants a copy of such notice for publication, and the said defendant S. A. D. Puter, pursuant to said unlawful conspiracy and agreement hereinbefore mentioned, caused each of said notices to be duly and regularly published in a newspaper, as required by law, and after the expiration of such publication the said defendant S. A. D. Puter furnished to the Register of said Roseburg Land Office satisfactory evidence that said notice of the application of each of said applicants had been duly published in a newspaper, as required by law, and procured each of said applicants to furnish satisfactory evidence to said Register that the said land included in each of said applications was unfit for cultivation and valuable chiefly for its timber, and that said land was unoccupied and without improvements, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal; and upon the submission of said evidence **[68]** and proof as furnished and offered, and notwithstanding the facts as hereinbefore set forth, the officers of the said United States Land Office at Roseburg, Oregon, being ignorant thereof and having no means of knowing or ascertaining the same, did receive from each of said applicants the sum of $400.00, as payment for the lands described in said respective applications, under the said Act of Congress of June 3d, 1878, at the rate of $2.50 per acre, and permitted each of

said applicants to enter the lands described in his or her respective applications, and issued to each of said applicants a certificate to the effect that such applicant, had purchased the land described therein and had made payment in full therefor, as required by law, which said entries, payments and certificates were permitted, made and issued on the dates and in the manner following, to wit:

FINAL CERTIFICATES.

Number.	Name.	Date.
8168	S. A. D. Puter,	April 18, 1900.
8170	John L. Green,	April 18, 1900.
8171	Thomas Wilson,	April 18, 1900.
8172	Charles Barr,	April 18, 1900.
8173	Charles Burley,	April 18, 1900.
8174	Neal D. Dozier,	April 18, 1900.
8176	Harry Saltmarsh,	April 18, 1900.
8177	Harry C. Barr,	April 18, 1900.
8178	Edward Finley,	April 18, 1900.
[69]		
8179	John J. Jaggy,	April 18, 1900.
8180	J. S. Phillips,	April 18, 1900.
8181	Zebulin Smith,	April 18, 1900.
8182	Douglas Adkinson,	April 18, 1900.
8183	Sadie E. Puter,	April 19, 1900.
8186	Mrs. Elvira Jacobs,	April 20, 1900.
8231	Isaac R. Borum,	May 16, 1900.
8232	Benjamin F. Kirk,	May 16, 1900.
8233	George L. Thompson,	May 16, 1900.
8234	Peter Buffington,	May 16, 1900.
8235	John Harrison,	May 16, 1900.
8236	Mrs. Jennie Moulton,	May 16, 1900.
8239	Jacob W. Stillwell,	May 16, 1900.

Number.	Name.	Date.
8240	Luella Beeman,	May 16, 1900.
8241	Henry B. Blakely,	May 16, 1900.
8242	Hugh Blakely,	May 16, 1900.
8243	Elam Miller,	May 16, 1900.
8244	Frank W. Burford,	May 16, 1900.
8238	James B. Cooley,	May 16, 1900.

X.

And your orator further shows unto your honors, that pursuant to said unlawful conspiracy to defraud the United States out of its said lands, as aforesaid, and pursuant to said unlawful agreements entered into by the said defendant S. A. D. Puter, with each of said applicants prior to making and filing applications for the purchase of the lands hereinbefore described, the said S. A. D. Puter at the time each of said applicants made proof before the officers of the United States Land Office at Roseburg, Oregon, as aforesaid, paid and advanced all the expenses and fees of each of said applicants and their respective witnesses, **[70]** and paid, advanced and furnished the purchase money for the lands included in the application of each of said applicants; and thereupon each of said applicants executed and delivered to the said John A. Willd, since deceased, a warranty deed purporting to transfer, convey and set over unto the said John A. Willd, since deceased, the title to the lands included and described in their respective applications and entries; and each of said applicants then and there executed and delivered to the defendant, Frederick A. Kribs a pretended mortgage upon the said lands, included in their respective entries and applications, purporting to secure the sum of

$600.00, payable ninety days after the date of such mortgage; and in each of said deeds and mortgages the applicants who were married were joined by their respective wives or husbands.

XI.

And your orator further shows unto your Honors and alleges, that each of the applications and entries hereinbefore mentioned was made by the respective applicants and entrymen and entrywomen as agents of and for the use and benefit of the said defendants S. A. D. Puter, C. A. Smith, Frederick A. Kribs, Robert F. Greacen, Hubert E. Rogers, Nils O. Werner, and John A. Willd, since deceased, or some of them. And also that each and every of the statements and representations made by the respective applicants and entrymen and entrywomen aforesaid, in each of their respective applications, and in each of their respective final proofs, hereinbefore mentioned and referred to, was and were false, fraudulent and untrue, by reason and because of the facts hereinbefore set forth and alleged; and by reason and because of the facts that each legal subdivision of the particular tract of land which he or she desired to purchase, and described in his or her [71] application, and in his or her final proof, was not unfit for cultivation, and was not valuable chiefly for timber, and such applicant did not verily believe that the same contained no valuable deposits of gold, silver, cinnabar, copper or coal, and in truth and in fact such applicant had made other application under such Act, and he or she did apply to purchase the lands above described on speculation and not in good faith and not to appropriate it to his or her own ex-

clusive use and benefit, and he or she had directly or indirectly made an agreement in some way and manner with some person or persons, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of some person except himself or herself, and in truth and in fact the oath of each of the respective applicants to their respective applications, and to their respective final proofs was wilfully and corruptly false and perjured, as the said applicant and the other defendants in this case then and there well knew, to wit, at the time of the making of said false representations and statements in said applications and in said final proofs, and at the time of making their respective oaths.

XII.

And your orator further avers that the said false and fraudulent representations aforesaid were each and all of them made by the defendants herein with the intent to deceive and defraud the United States out of the use of, title to and possession of the lands hereinbefore described. And that your complainant and its officers empowered to act in the premises being ignorant of the falsity thereof, and having no means of ascertaining the same, relied thereon and were induced thereby to and did, on the 12th day of August, **[72]** 1902, issue to each of said applicants to purchase and enter timber lands, as hereinbefore set forth, a patent purporting to convey the lands described in said application and proof to the applicant who applied therefor as aforesaid.

XIII.

And your orator further shows unto your Honors

and alleges, that by reason of the facts hereinbefore stated, a fraud has been perpetrated on the complainant and it has been deprived of the legal title to the land hereinbefore described, contrary to law and good conscience, and that the officers of the United States Land Office at Roseburg, Oregon, and of the Department of the Interior and the General Land Office of the United States, and the President of the United States had no knowledge of the facts as hereinbefore set out, and did not discover such facts until a long time after the issuance of such patents and just prior to the institution of this suit, and by the exercise of reasonable diligence could not have discovered these facts any sooner.

XIV.

And your orator further shows unto your Honors that thereafter for the purpose of preventing complainant from recovering said lands, deeds of release and quitclaim purporting to convey the same, were fraudulently and corruptly executed by and among the defendants in the order and at the dates herein respectively named, to wit: John A. Willd, and wife to Robert F. Greacen, November 2, 1900; Robert F. Greacen to Hubert E. Rogers, February 11, 1901; Hubert E. Rogers and wife to Nils O. Werner, December 21, 1904. And your orator charges and avers that all of the fraudulent transactions hereinbefore set forth and alleged in this bill of complaint, were corruptly made and performed with **[73]** the intent and for the purpose that the title to the lands hereinbefore described should inure to the benefit of the defendant C. A. Smith, and that in each and every instance, respectively, and as to each and every

party in this paragraph mentioned, he took and received said respective deeds with full knowledge and notice of the fraud so perpetrated upon your orator as alleged in this bill of complaint and without having paid or given any consideration therefor, and for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore mentioned and for the use and benefit of the defendant, C. A. Smith, and to enable the said defendant, C. A. Smith, to prevent the United States from recovering said lands and that each of such conveyances and deeds and pretended purchases is void in equity and should be so declared in favor of the United States.

XV.

That thereafter the said defendant, C. A. Smith, intending further to defraud and deceive this complainant and to corruptly and fraudulently prevent complainant from recovering said lands hereinbefore described complied with the forms of the laws of the State of Minnesota relating to the organization of private corporations and on or about the 24th day of May, 1906, caused to be filed a certificate of the articles of incorporation in the office of the Secretary of State in and for said State of Minnesota. That said articles, or certificate of incorporation was executed by the said C. A. Smith, his wife Johanna Smith, and his son Vernon Smith, as incorporaters, and it was stated in the said articles of incorporation that the name by which the corporation sought to be organized should be known, should be Linn & Lane Timber Company. **[74]**

That thereafter the said defendant, C. A. Smith, complied with the forms of the laws of the State of

Minnesota necessary to authorize the said Linn & Lane Timber Company to transact business as a corporation in the State of Minnesota. That the purposes of the formation of said corporation was to form a holding company for lands in the State of Oregon owned or claimed by the said defendant C. A. Smith. That your orator is informed and believes that all stock of said corporation, if any was ever issued, to persons other than the said C. A. Smith, was and is held for the use and benefit of the said defendant, C. A. Smith. That said corporation is named in the title of this amended bill as a defendant herein.

That thereafter the defendant, C. A. Smith, for the purpose among others of fraudulently and corruptly preventing complainant from recovering the lands hereinbefore described on or about the 25th day of June, 1906, caused to be filed in the office of the Secretary of State of the State of Oregon, a certified copy of the articles and certificate of incorporation of said Linn & Lane Timber Company together with what purported to be the appointment of the defendant, F. A. Kribs as attorney in fact of said corporation in and for the State of Oregon; and ever since said time that the said defendants, C. A. Smith and F. A. Kribs have and do now pretend that the said defendant, F. A. Kribs, was and is such attorney in fact in and for the State of Oregon of said Linn & Lane Timber Company.

XVI.

That thereafter on or about the 9th day of September, 1908, the defendant, C. A. Smith, caused to be filed for record with the Recorder of Conveyances

for Linn County, Oregon, two certain deeds purporting to have been executed by Nils O. Werner and Eva C. Werner, his wife, and **[75]** the said C. A. Smith and Johanna A. Smith, his wife, bearing dates, respectively, the 15th day of August, 1907, and the 4th day of June, 1908, each purporting to convey to the defendant, Linn & Lane Timber Company, the lands hereinbefore described. And your orator further avers and alleges that said deed of the said Nils O. Werner and his said wife, Eva C. Werner, was made and executed to the said Linn & Lane Timber Company without consideration and with full knowledge upon the part of said corporation of the fraudulent practice hereinbefore set forth and for the use and benefit of the said defendant, C. A. Smith and for the corrupt and fraudulent purpose of preventing your complainant from recovering said land and that the said deed of the said defendant C. A. Smith and Johanna A. Smith, his wife, was executed to the defendant Linn & Lane Timber Company for the corrupt and fraudulent purpose of preventing complainant from recovering the said lands and without consideration paid therefor, and with full knowledge on the part of said corporation of the fraudulent practices hereinbefore set forth and for the use and benefit of the said defendant, C. A. Smith and that said deed was not executed at the date which it bears upon its face, but was executed by the said defendant, C. A. Smith and Johanna A. Smith, his wife, long after the commencement of this suit and shortly prior to the time the same were offered for record as aforesaid, and that your orator had no knowledge

or notice of said deeds of said Nils O. Werner and wife, and the said C. A. Smith and Johanna A. Smith, his wife, until after the same were offered for record as aforesaid, and the existence of the same was concealed from your orator up until the time they were offered for record as aforesaid for the corrupt and fraudulent purpose of preventing complainant from recovering **[76]** said lands and your orator had no means of discovering the existence of said last mentioned deeds until they were so offered for recording.

XVII.

And your orator further shows unto your Honors that he is informed that the defendant, First Trust and Savings Bank of Illinois, claims to have some interest in said lands patented to the defendants, as hereinbefore set forth, but your orator avers that whatever interest or claim the said First Trust and Savings Bank of Illinois has, or claims to have, in said lands is subject and inferior to the rights of complainant therein, and that the said First Trust and Savings Bank of Illinois procured and received whatever interest or claim it has in or to said lands with full notice of the fraud so perpetrated upon the complainant, as alleged in this bill of complaint, and without having paid or given any consideration therefor, and for the purpose of effecting the objects and purposes of said unlawful conspiracy hereinbefore mentioned, and to prevent the United States from recovering said lands, and that such claim or right of the First Trust and Savings Bank of Illinois is void in equity and should be so declared in favor of the United States, and any pretended encumbrance

or lien alleged to be existing in favor of the said First Trust and Savings Bank of Illinois should be declared void by the decree of this Honorable Court.

XVIII.

And your orator further avers that the false and fraudulent representations and corrupt and unconscionable practices made and engaged in by the defendants as hereinbefore set forth, were all made with the intent and for the purpose of deceiving and defrauding the United States out of the use of, title to and possession of the lands hereinbefore [77] described, and that your complainant relied upon said false and fraudulent representations so made as aforesaid, and by reason of such false and fraudulent representations and unlawful and corrupt practices of the said defendants, all of said patents hereinbefore mentioned and described are void and ought to be cancelled and annulled and held for naught, and any and every purchase or pretended purchases or incumbrances or liens or pretended incumbrances or apparent lien alleged by defendants or any of them to be existing at law or in equity upon the lands hereinbefore described or any portion thereof should be declared void by the decree of this Honorable Court.

XIX.

Your orator further shows unto your Honor that immediately prior to the commencement of this suit your orator caused diligent search and inquiry to be made for the purpose of ascertaining the existence of any and all right, title and interest in any manner asserted or claimed in or to any of said lands, together with the names of any and all parties so asserting or claiming the same, and particularly

those claiming to have the legal title thereto, by succession from the aforesaid original patentees or otherwise, for the purpose of setting forth any and all such alleged right, title and interest in the original bill of complaint herein, and making all persons and corporations claiming or asserting the same, parties defendant to this suit.

And in that behalf your orator caused inquiries to be made of all persons known to your orator who would be likely to possess any information upon the subject aforesaid, and caused diligent and accurate search to be made of the public records of Linn County, Oregon, wherein all of said lands are situated (and being the only public records known [78] to your orator to contain any information upon said subject), including the registry records of said county pertaining to mortgages, deeds and other conveyances, and the records of the assessor's and sheriff's offices of said county concerning the assessment of said lands and the payment of taxes thereon.

That such search and inquiry did not reveal any right, title or interest in or to any of said lands, in favor of, or claimed or asserted by, said Linn & Lane Timber Company, nor the existence of said Linn & Lane Timber Company; on the contrary said search and inquiry disclosed that the defendants alleged in complainant's original bill of complaint to be claiming certain interests and estates in said lands were the only persons asserting or claiming any right, title or interest in or to any of said lands, and further disclosed that they, the said original defendants, had continuously asserted such claims subsequent to the time said alleged deeds of conveyance to said Linn &

Lane Timber Company purport to have been executed, and down to and until the time of the filing of the original bill of complaint herein, that is to say: the registry records of said county disclosed that the legal title to all of said lands was in the aforesaid alleged grantors of said Linn & Lane Timber Company, and the records of the assessor's and sheriff's offices of said county disclosed that all of said lands were assessed in the names of, and the taxes assessed thereupon were paid by, said alleged grantors of said Linn & Lane Timber Company; and said inquiries made by and on behalf of your orator as aforesaid revealed the fact to be, and your orator alleges, that all of the lands described in this amended bill of complaint now are, and at all times have been, unoccupied, and none of said lands have ever been in the [79] actual occupation or possession of any person or corporation, or at all.

And your orator says that if said Linn & Lane Timber Company ever acquired any alleged right, title or interest in or to any of said lands, it has at all times thereafter until September 9th, 1908, permitted the public records of said Linn County to show that its alleged grantors held the legal title to all of said lands, and has at all times permitted all of said lands to be assessed in the names of its aforesaid alleged grantors, and has further permitted said records to show that the taxes assessed upon all of said lands were paid by its aforesaid alleged grantors; and your orator further says that one of the said alleged grantors of said Linn & Lane Timber Company, to wit: C. A. Smith, in whose name a large part of said lands have been assessed and taxes thereon

paid as aforesaid, was one of the incorporators of said Linn & Lane Timber Company as aforesaid, and at all times has been and still is the President thereof.

By reason of the premises your orator was kept in ignorance of any and all pretended rights and interests of said Linn & Lane Timber Company in or to any of said lands, until apprised thereof by the filing of that certain plea interposed herein on the 5th day of September, 1908, by certain of the original defendants herein, whereby the aforesaid alleged rights and interests of said Linn & Lane Timber Company are set forth; and further by reason of the premises your orator was induced to believe, and at all times until apprised to the contrary as aforesaid did believe, that no right, title or interest of any kind or nature was asserted or claimed by any person or corporation other than as set forth in the original bill of complaint herein. [80]

FORASMUCH, THEREFORE, as your orator is without adequate remedy in the premises, except in a court of equity where such matters are properly relievable, and to the end therefor, that your orator may have that relief which may only be obtained in a court of equity and in this court having jurisdiction thereof under the aforesaid facts as alleged, and that the defendants and each of them may answer the premises and show, if he or she can, why your complainant should not have the relief herein prayed for.

Your orator prays and requests of your Honors to grant unto your complainant a writ of subpoena to be directed to said defendant, Linn and Lane Timber Company, and to such defendants as have not been

served with process herein and each of them commanding him or her at a day certain, and under a penalty therein to be limited to personally appear before this Honorable Court, then and there, well, true, direct and perfect answer make to all and singular the premises, but not under oath or affirmation, the benefit whereof is hereby expressly waived, and to stand, perform and abide by such order and decree as may be made against them in the premises as to your Honors shall *meet* meet and agreeable to equity and that the defendants herein that have been heretofore served with process or have heretofore appeared herein shall make like answer at a day certain to be named by your Honors under like conditions, and that your complainant may have such further and other relief in the premises as the nature of the circumstances may require, and particularly that your orator may have a decree cancelling and annulling and setting aside all liens and encumbrances and pretended liens and encumbrances upon said lands, and divesting the **[81]** defendants, and each of them, of and from all right, title, estate in law or equity and of all claim or interest of whatsoever kind or nature that they or any of them may assert thereto, and in and about the premises may make such further orders or decree as may be meet and agreeable to equity, and that your complainant may have its costs in this su[t]t, and recover such damages and penalties herein as to your Honors the circumstances may

seem to warrant and as may seem meet and agreeable to equity.

CHARLES J. BONAPARTE,
Attorney General of the United States.
JOHN McCOURT,
United States Attorney for the District of Oregon.
TRACY C. BECKER,
Special Assistant to the Attorney General of Counsel.

United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn, on oath depose and say: That I am United States Attorney for the District of Oregon, and that the facts set forth in the foregoing bill of complaint are true as I verily believe.

JOHN McCOURT.

Subscribed and sworn to before me this 3d day of November, 1908.

[Seal] B. AMY,
Notary Public for Oregon.

Due, legal and timely service of the foregoing Amended Bill of Complaint, by copy duly certified to by John McCourt, United States Attorney for the

District of Oregon, is hereby admitted at Portland, Oregon, this 4th day of November, 1908.

DOLPH, MALLORY, SIMON & GEARIN,
Per M.
Attys. for ————.

ALBERT H. TANNER,
Atty. for Fred. A. Kribs et al.

W. W. BANKS,
Atty. for Henry Blakely et al.

L. H. TARPLEY.

Amended Bill of Complaint. Filed November 16, 1908. G. H. Marsh, Clerk. **[82]**

And afterwards, to wit, on Monday, the 16th day of November, 1908, the same being the 37th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[83]**

[Order Directing Issuance of Subpoena Ad Respondendum to Linn & Lane Timber Co., etc.]

(Title of Court and Cause.)

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and the defendants Nils O. Werner and C. A. Smith, by Mr. John M. Gearin, of counsel, and the defendant Frederick A. Kribs, by Mr. Albert H. Tanner, of counsel; Whereupon, it appearing to the Court that the plaintiff has filed and Amended Bill of Complaint herein, in which the Linn and Lane Timber Company is

made a party defendant in addition to the defendants named in the original Bill of Complaint, on motion of said plaintiff IT IS ORDERED that a Subpoena ad Respondendum, returnable as provided by the Equity Rules on the Rule day in December, 1908, issue to said defendant, Linn and Lane Timber Company:

And it is further ORDERED that the remaining defendants in this cause answer, demur or plead to said Amended Bill of Complaint within thirty days from this date.

CHARLES E. WOLVERTON,
Judge.

Filed November 16, 1908. G. H. Marsh, Clerk. **[84]**

And afterwards, to wit, on the 16th day of November, 1908, there was issued out of said court a Subpoena ad Respondendum on Amended Bill of Complaint, in words and figures, as follows, to wit: **[85]**

[Marshal's Return to Subpoena Ad Respondendum.]

United States of America,
District of Oregon,—ss.

I, Charles J. Reed, United States Marshal for the District of Oregon, hereby certify that I received the within writ of subpoena ad respondendum on the 18th day of November, 1908, and that I served the same upon the 18th day of November, 1908, within the State and District of Oregon, and within Multnomah County thereof, upon the within-named defend-

ant, Linn and Lane Timber Company, a corporation, by personally delivering to Frederick A. Kribs in person, as attorney in fact and authorized agent of said Linn and Lane Timber Company, a true copy of said subpoena ad respondendum, duly and regularly certified to be such copy by G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, together with a true copy of the bill of complaint herein, duly and regularly certified to be such copy by John McCourt, United States Attorney for the District of Oregon; the said Frederick A. Kribs being then and there a citizen and resident of the State of Oregon, residing in Portland, Multnomah County, Oregon, and being the duly appointed, true and lawful attorney in fact and authorized agent of the Linn and Lane Timber Company, a corporation, defendant, authorized to make and accept service of all writs, processes and summonses in any action, suit or proceeding in any of the Courts of the State of Oregon or United States Courts therein, and upon whom all lawful writs, processes and summonses may be served to the same effect as though the said Linn and Lane Timber Company existed in the State of Oregon, requisite and necessary to give competent and complete jurisdiction of said Linn and Lane Timber Company to any of said Courts.

In witness whereof I have hereunto set my hand this 20th day of November, 1908.

CHARLES J. REED,
U. S. Marshal for the District of Oregon.
Leonard Becker,
Deputy. [86]

(Title of Court and Cause.)

Subpoena Ad Respondendum [to Linn and Lane Timber Co.].

The President of the United States of America, to Linn and Lane Timber Company, Greeting:

You, and each of you, are hereby commanded that you be and appear in said Circuit Court of the United States, at the courtroom thereof, in the City of Portland, in said District, on the first Monday of December next, which will be the 7th day of December, A. D. 1908, to answer the exigency of an amended Bill of Complaint exhibited and filed against you in our said court, wherein The United States of America is complainant, and you are defendant, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to command you, the marshal of said District, or your deputy, to make due service of this our Writ of Subpoena and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the United States, this 16th day of November, in the year of our Lord one thousand nine hundred and eight and of the Independence of the United States, the one hundred and thirty-third.

[Seal] G. H. MARSH,
Clerk.

By ————————,
Deputy Clerk.

MEMORANDUM PURSUANT TO. EQUITY RULE NO. 12 OF THE SUPREME COURT OF THE UNITED STATES.

The defendant is to enter his appearance in the above-entitled suit in the office of the clerk of said court on or before the day at which the above writ is returnable; otherwise the complainant's bill therein may be taken *pro confesso.*

[Endorsed]: Doc. 396, p. 70. No. 3320. In the Circuit Court of the United States for the District of Oregon. In Equity. The United States vs. Nils O. Werner et al. Subpoena Ad Respondendum. Returned and filed Nov. 20, 1908. (Signed) G. H. Marsh, Clerk. By ————, Deputy Clerk. **[87]**

And afterwards, to wit, on Wednesday, the 2d day of December, 1908, the same being the 50th judicial day of the regular October, 1908, term of said court—Present, the Honorable CHARLES E. WOLVERTON, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[88]**

[Order Allowing Defendants Time to Plead to Amended Bill.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff in the above-entitled cause by Mr. John McCourt, United States Attorney, and the defendants Nils O. Werner and C. A. Smith, by Mr. John M. Gearin, of counsel, whereupon, on motion of said defendants, IT IS ORDERED that all defendants be, and they are

hereby, allowed until Monday, February 1, 1909, in which to plead to the amended bill of complaint herein. **[89]**

And afterwards, to wit, on the 29th day of December, 1908, there was duly filed in said court a praecipe for the appearance of the defendant, Linn and Lane Timber Company, in words and figures as follows, to wit: **[90]**

[Praecipe for Entry of Appearance for Linn and Lane Timber Co.]

(Title of Court and Cause.)

To the Clerk of the Above-entitled Court:

You will please enter our appearance as solicitors and counsel for defendant, the Linn & Lane Timber Company, in the above-entitled cause.

Dated January 4, 1909.

JOHN LIND.
A. EULAND.
W. M. JEROME.
JNO. M. GEARIN.
DOLPH, MALLORY, SIMON & GEARIN.

Notices and copies in the above-entitled cause may be served on each of the undersigned by delivering the same to John M. Gearin, Esq., at his office in the Mokawk Building, Portland, Ore.

JOHN LIND,
A. EULAND,
W. M. JEROME,
Solicitors and Counsel for Defendant, the Linn & Lane Timber Company.

Notice of Appearance. Filed December 29, 1908. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[91]**

And afterwards, to wit, on the 29th day of January, 1909, there was duly filed in said court an Answer of Nils O. Werner et al., in words and figures as follows, to wit: **[92]**

[Joint and Several Answers of Nils O. Werner et al. to Amended Bill.]

(Title of Court and Cause.)

The joint and several answers of Nils O. Werner, Charles A. Smith and Frederick A. Kribs, defendants, to the amended bill of complaint of the United States of America, the complainant.

These defendants respectively now and at all times hereafter saving and reserving to themselves respectively all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering say:

FIRST. These defendants respectively admit that the First Trust and Savings Bank of Illinois has been and is a corporation, duly organized under the laws of the State of **[93]** Illinois, and that defendants Nils O. Werner and Eva C. Werner are and have been husband and wife, and that the lands described in paragraph III of the said amended bill were a part of the public domain of the complainant prior to the

month of June, 1900, and that the complainant had the legal title to the same until the 12th day of August, 1902; but these defendants respectively deny that complainant has been the owner of any equitable title, or of any other right, title, or interest whatsoever, in any of said lands since the last mentioned date.

SECOND. These defendants respectively deny that S. A. D. Puter, C. A. Smith, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers, Frederick A. Kribs, John A. Willd, or any of them, either together with other persons, or otherwise, ever entered into a conspiracy or agreement to defraud the complainant out of the title to the lands described in the said amended bill, or any of such lands. And these defendants respectively say it is not true that it was ever understood or agreed between the persons named in this paragraph, or any of them, that S. A. D. Puter should solicit or procure any person, either together with himself or otherwise, to make application for or entry on any of said lands, under any Act of Congress or otherwise, or that said Puter should procure or obtain from any person filing on any of said lands any agreement or promise that the title which such person might acquire from the complainant should enure to the benefit of any persons named in this paragraph, or that any person after filing on any of said lands, after receiving certificates showing that he had been permitted to file thereon, should or would execute or deliver to said C. A. Smith, or to said John A. Willd, any deed or other conveyance of any of said lands, or execute or deliver to Frederick

A. Kribs or S. A. D. Puter any note, or any mortgage on any of said lands; or that said Puter should promise any person to pay [94] any expense of filing or of making proof, or the price required to be paid to the complainant, or any part of such expense or purchase price.

THIRD. These defendants respectively have no reason to doubt, and therefore believe, that applications to enter and purchase the several tracts of land described in the amended bill, under the Act of Congress in said bill referred to, were made by the several entrymen and entrywomen in said amended bill named, at the United States Land Office at Roseburg, Oregon, at or about the times in said amended bill stated, and that each application was verified by the oath of the person making such application, and filed on the date mentioned in the amended bill, and that each application was for the land in that behalf described in said amended bill, except that the land applied for by John L. Green was in Section 35, and the land applied for by Zebulin Smith was the northwest quarter of Section 34, and the land applied for by Thomas Wilson was in Section 28, all in township 14, range 3 east.

FOURTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter solicited or procured any of said entrymen and entrywomen other than himself to make any of the aforesaid applications to purchase and enter said lands, and therefore leave the complainant to make such proof thereof as it

shall be able to produce.

FIFTH. These defendants respectively say it is not true that any of said applicants, prior to making or filing his or her said application to purchase or enter said land, made a contract or agreement with S. A. D. Puter, whereby such applicant promised or agreed to purchase or enter said lands, or any part of same, for the use or benefit of C. A. Smith, [95] Frederick A. Kribs, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers and John A. Willd, or any of them, or that any of said applicants, prior to making or filing his or her said application agreed to transfer, convey or set over any of said lands, to C. A. Smith or John A. Willd, or promised or agreed to execute or deliver any note, secured by mortgage on any of said lands, to S. A. D. Puter or Frederick A. Kribs, or that S. A. D. Puter, prior to the making or filing his application, entered into any agreement with C. A. Smith or Frederick A. Kribs to transfer or convey, or set over, any of said lands to said C. A. Smith or John A. Willd.

SIXTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter, prior to the making or filing of said applications, promised or agreed to pay any of said applicants the sum of $100, or any other sum, or the expense of filing or of making final proof on any of said lands, or the purchase price for any of said lands, or any part of such expense or purchase price, and defendants therefore leave the complainant to make such proof thereof as it shall be

able to produce.

SEVENTH. These defendants respectively have no reason to doubt and therefore believe that the Timber and Stone Sworn Statements mentioned in the amended bill, contained and set forth, respectively, the several matters which in that behalf are in said amended bill specified, but for greater certainty these defendants crave leave to refer to said statements when produced.

EIGHTH. These defendants respectively have no reason to doubt, and therefore believe, that upon filing the aforesaid statements, the Register of said United States Land Office posted a notice of each application as required by law, and furnished each applicant a copy of such notice for publication in a newspaper **[96]** as required by law, and that satisfactory evidence that said notices had been so published in a newspaper was furnished to said Register, and that the applicants, respectively, furnished satisfactory evidence to said Register that the land covered by his or her application or entry was unfit for cultivation and valuable chiefly for timber, and that it was unoccupied and without improvement, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal; and that upon submission of such proof the officers of said Land Office received from each applicant $400 as payment for the land described in the application of such applicant at the rate of $2.50 per acre, and permitted each applicant to enter the land described in his or her application, and issued to each applicant a certificate of purchase, as stated in said amended bill, but for greater cer-

tainty as to said final proofs and certificates of purchase these defendants crave leave to refer to the same when produced.

NINTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter caused any of the notices referred to in the foregoing paragraph to be published in a newspaper or furnished to the Register of said Land Office evidence that any of said notices had been published in a newspaper, or procured any of the applicants to furnish any evidence to said Register, and defendants therefore leave the complainant to make such proof thereof as it shall be able to produce.

TENTH. These defendants respectively say that defendant Frederick A. Kribs resided in the State of Oregon during the years 1900 to 1903, both inclusive, and that during this period, he was engaged in buying and selling timber lands situated in the States of Oregon and California, and that **[97]** during said period defendant Charles A. Smith resided in the City of Minneapolis, in the State of Minnesota; that on or about the first day of January, 1900, it was agreed between said Kribs and Smith that said Kribs might from time to time submit to said Smith lists of timber lands in said Oregon and California, acquired or bargained for by him, the said Kribs, together with information concerning the timber on such lands, and the price paid or bargained to be paid for the same by said Kribs, and that said Smith might thereupon purchase the lands so submitted at the price paid or bargained to be paid for the same

by said Kribs, with a reasonable amount per acre added to such price, which amount to be added was thereafter fixed and agreed upon by said Kribs and Smith to be the sum of twenty-seven and one-half cents per acre; that said agreement was modified on the 21st day of December, 1901, so that the price to be paid by said Smith thereafter under said agreement was to be fifty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands, and said agreement was again modified on the 5th day of December, 1902, so that the price to be paid by said Smith under said agreement during the following twelve months was to be thirty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands; that said Smith being a large purchaser of timber lands in said States during said period, it was considered that if it should be generally known in any locality that said Smith was purchasing timber lands in such locality such knowledge would tend to unduly advance prices, and with a view of acquiring timber lands at a reasonable price, it was further understood and agreed between said Kribs and Smith, that the latter might designate persons other than himself in whose name title might be taken to such lands as said Smith might purchase pursuant to said agreement. **[98]**

ELEVENTH. These defendants respectively say that between the 15th day of April and the 17th day of May, 1900, defendant Frederick A. Kribs furnished the aforesaid entrymen and entrywomen, respectively (except S. A. D. Puter and Sadie E. Puter), the sum of $600 to enable them to pay to the complainant the purchase price of $400 mentioned in

the amended bill, and the expense of making final proof, and that the money so furnished was used by said entrymen and entrywomen, respectively, to pay such purchase price and expense, and that as security for the money so furnished said Kribs received from each of said entrymen and entrywomen the mortgage for $600 referred to in said amended bill. And these defendants respectively say that between the 15th day of April and the 20th day of May, 1900, said Kribs bargained with the entrymen and entrywomen named in the amended bill, including S. A. D. Puter and Sadie E. Puter, for the purchase from them, respectively, at the price of $5.25 per acre, of the land for which said entrymen and entrywomen had theretofore respectively made and filed the timber and stone sworn statements described in the amended bill, and after he had so bargained for the purchase of said lands said Kribs offered the same to defendant C. A. Smith in accordance with the aforesaid agreement between them, and said Smith thereupon accepted said lands, and paid for the same $5.25 per acre, and twenty-seven and one-half cents per acre additional, in accordance with the said agreement, which was then the fair and full value of said lands, and having so accepted said lands and paid for the same, said Smith, in accordance with the said agreement, directed the conveyances from said entrymen and entrywomen, respectively, to be made to John A. Willd, and pursuant to such direction, deeds for said lands from said entrymen and entrywomen, respectively, were thereupon executed and delivered to said John A. Willd, which deeds were also executed **[99]** and delivered by the hus-

band and wife of each of the entrymen and entrywomen who was married, and said deeds contained respectively a covenant on the part of the entrymen and entrywomen, executing the same, that he or she and his and her heirs, executors and administrators, would warrant and defend the title to the land conveyed against the lawful claims and demands of all persons whomsoever.

TWELFTH. These defendants respectively say that Frederick A. Kribs, Charles A. Smith and John A. Willd, respectively, had no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill prior to the commencement of this suit, and that in furnishing the money and taking the mortgages referred to in the foregoing paragraph, and in accepting and paying for the conveyances referred to in said paragraph, said Kribs, Smith and Willd respectively, acted in good faith, each believing that said entrymen and entrywomen respectively, could then rightfully and lawfully mortgage, sell and convey the lands covered by their respective entries.

THIRTEENTH. These defendants respectively do not know and cannot set forth as to their or either of their belief or otherwise whether or not it is alleged or is the fact that any statement or representation in any of the applications or final proofs referred to in the amended bill was false, or fraudulent, or untrue, or made with intent to deceive or defraud the complainant out of the use of, or title to, or possession of, any of said lands, and these defendants therefore leave complainant to make such proof thereof as it may be able to produce.

FOURTEENTH. These defendants respectively admit that on the 12th day of August, 1902, complainant issued patents to said entrymen and entrywomen and thereby granted and conveyed [100] to them respectively the land covered by their respective applications and entries.

FIFTEENTH. These defendants respectively have been informed and believe that soon after the issuance of the final certificates mentioned in the amended bill, complainant suspended the issuance of patents for the lands covered by said final certificates, and that complainant thereupon for a period of nearly two years investigated and examined all matters and things relating to the entries described in the amended bill, and that complainant did not issue the patents hereinbefore referred to until said investigation and examination had been made and completed to the satisfaction of the complainant.

SIXTEENTH. These defendants respectively say that John A. Willd and his wife conveyed said lands to Robert F. Greacen on November 2d, 1900, and that said Greacen conveyed said lands to Hubert E. Rogers on February 11th, 1901, and that said Rogers conveyed said lands to Nils O. Werner on December 21, 1904. And these defendants respectively say that each of said conveyances was made at the instance and request of said Charles A. Smith, and that each of said grantees took title under the conveyance to him for the use and benefit of and in trust for said Smith, and that said Smith procured said conveyances to be made for the purpose of procuring a loan on said lands without disclosing that he was the owner thereof, or that he was mortgaging

the same. And these defendants respectively say that on December 21, 1904, after said lands had been so conveyed to said Werner, said Charles A. Smith procured a loan of forty thousand dollars on the security of a promissory note for that sum made by said Werner to one Charles M. Amsden, and a mortgage on said lands securing said note, executed by said Werner and his wife, to said Amsden, which said note and mortgage were assigned and transferred by said Amsden to defendant, **[101]** the First Trust and Savings Bank, on the 10th day of January, 1905, and that said loan and the said note and mortgage securing the same were afterwards fully paid and satisfied by said Charles A. Smith.

SEVENTEENTH. These defendants respectively say it is not true that any of the deeds referred to in the next foregoing paragraph was given to prevent complainant from recovering any of said lands.

EIGHTEENTH. These defendants respectively say that on or about the 31st day of May, 1906, defendant, the Linn and Lane Timber Company, was duly organized as a corporation under the general laws of the State of Minnesota, and its certificate of incorporation was executed by Charles A. Smith, Johanna A. Smith and John Lind, and was recorded in the office of the Secretary of State for said State of Minnesota on May 24, 1906, but said certificate was not executed by Vernon Smith. And these defendants respectively say that said Company was not organized for any purpose except as stated in said certificate of incorporation in the following words, to wit: "To buy, hold and sell timber lands and tenements in the United States of America and

to conduct forestry, mining and agricultural operations on the same; to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develope electric energy and other power for the operation of its works and the transportation of its products and for sale." **[102]**

NINETEENTH. These defendants respectively say it is not true that said Linn and Lane Timber Company was organized by C. A. Smith or any other person with intent to defraud or deceive complainant, or to prevent complainant fom recovering any of the lands described in the amended bill.

TWENTIETH. These defendants respectively say that on or about the 25th day of June, 1906, defendant, the Linn and Lane Timber Company, caused to be filed in the office of the Secretary of State for the State of Oregon a certified copy of its said certificate of incorporation, and a power of attorney constituting and appointing Frederick A. Kribs as its attorney in fact and agent in and for the State of Oregon, but these defendants respectively say it is not true that C. A. Smith or any other person, caused such certified copy or such power of attorney to be filed in said office for the purpose of preventing complainant from recovering any of the lands described in said amended bill.

TWENTY-FIRST. These defendants respectively admit that since said certificate and power of attorney were so filed in the office of the Secretary of State for said State of Oregon, C. A. Smith and F. A. Kribs have pretended and claimed that said Kribs has been and is attorney in fact in and for said State of Oregon for said Company.

TWENTY-SECOND. These defendants respectively say that said Linn and Lane Timber Company was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of one hundred dollars each; that on the 4th day of June, 1906, defendant Charles A. Smith and Johanna A. Smith, his wife, executed and acknowledged three certain deeds in which said Company was named as grantee, all dated on said day; that one of said deeds was for the lands described **[103]** in the amended bill and certain other lands in Linn County, Oregon, and is one of the deeds referred to in paragraph XVI of the amended bill; that one of the said three deeds was for certain lands in Lane County, Oregon, then owned by said Smith, and one was for certain lands in Douglass County, Oregon, then also owned by said Smith; that at a meeting of the board of directors of said Company, held at the City of Minneapolis in the State of Minnesota, on the 9th day of June, 1906, said Charles A. Smith offered to convey to said Company the lands described in said three deeds and to accept as a consideration for such conveyance the said capital stock of said Company, which offer was on said day, and at said meeting accepted by said Company, and pursuant thereto said three deeds were on said date de-

livered by said Charles A. Smith to said Company and the said capital stock of said Company was at the same time issued by said Company in accordance with directions given by said Charles A. Smith as follows: One share thereof to Johanna A. Smith, one share thereof to John Lind, and nine hundred and ninety-eight shares thereof to said Charles A. Smith; that in order to perfect the title to the lands which said Smith agreed to convey to said Company for said stock, said Smith, on August 15, 1907, procured Nils O. Werner and Eva C. Werner, his wife, to execute and deliver to said Company the deed from them referred to in said paragraph XVI of the amended bill; and these defendants respectively say said company purchased the lands described in said amended bill at the time and in the manner and for the consideration aforesaid, in good faith, believing that Charles A. Smith and Nils O. Werner were then well and lawfully seized of said lands in fee simple and could rightfully and lawfully convey the same to said Company and said Company had then no notice or knowledge whatsoever of any claim in or to any of said lands on the part of the complainant. **[104]**

TWENTY-THIRD. These defendants respectively admit that the aforesaid two deeds from Charles A. Smith and Nils O. Werner, the same being the deeds referred to in paragraph XVI of the amended bill, were filed for record in the office of the Recorder of Conveyances for Linn County, Oregon, on September 9th, 1908, but deny that they were so filed by Charles A. Smith.

TWENTY-FOURTH. These defendants respectively say it is not true that either of the deeds re-

ferred to in the next foregoing paragraph was without consideration or that any of these defendants or said Company had notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the amended bill, or that either of the two deeds last above referred to was for the use or benefit of Charles A. Smith, or that either of said two deeds was executed for the purpose of preventing complainant from recovering said lands, or any part of the same, or that said deed from Charles A. Smith was executed on any other day than the date on which it purports to have been executed.

TWENTY-FIFTH. These defendants respectively say that they do not know and cannot state as to their or either of their belief or otherwise whether or not it is alleged or is the fact that the complainant did not know of the existence of the deeds referred to in paragraph XVI of the amended bill until the same were offered for record, or that complainant had no means of discovering the existence of said deeds until they were offered for record, or that complainant prior to the commencement of the suit caused any search or inquiry to be made to ascertain who had some right, title or interest in or to any of the aforesaid lands, and therefore leave complainant to make such proof thereof as it may be able to produce.

TWENTY-SIXTH. These defendants respectively say **[105]** that it is not true that all the capital stock of said Linn and Lane Timber Company has been or is held for the use or benefit of defendant Charles A. Smith, or that said Smith has at all times been or is the president of this defendant,

but on the contrary that the facts respecting said matters are as follows: On February 15th, 1908, said Smith sold and transferred fifteen shares of said stock to Charles J. Johnson, of the City of Minneapolis, who has since been and now is the owner of the same. On February 14th, 1908, said Smith transferred three hundred shares of said stock to the Swedish-American National Bank of Minneapolis to secure promissory notes and other obligations given by him to said Bank, amounting in the aggregate to upwards of $350,000. On February 15th, 1908, said Smith transferred ten shares of said stock to Charles J. Swanson of Fridley, Minnesota, to secure a promissory note for $5,000 made by said Smith, and said Swanson has since held and now holds said ten shares as such security. On October 31, 1908, said Smith transferred to said Swedish-American National Bank additional two hundred and ten shares of said stock, two hundred and eight of which direct to said Bank, and one each to B. F. Nelson and C. C. Wyman in trust for said bank, to further secure his, the said Smith's aforesaid promissory notes and other obligations to said Bank. On said October 31, 1908, said Charles J. Johnson transferred his aforesaid fifteen shares to said Swedish-American National Bank to secure promissory notes and other obligations given by him to said Bank, amounting to upwards of $50,000. Said Swedish-American National Bank held the five hundred and ten shares transferred to it as hereinbefore stated until on or about the first day of December, 1908, at which time it sold, assigned and transferred to the Northwestern National Bank of Minneapolis the

aforesaid [106] promissory notes and other obligations held by it against said Smith and Johnson, and the said shares of stock held as security for the same, and the said Northwestern National Bank has since held, and now holds, said five hundred and twenty-five shares of the stock of said Company as security for said promissory notes and other obligations of said Smith and Johnson, and there is now unpaid on said promissory notes and other obligations more than $250,000.

TWENTY-SEVENTH. These defendants respectively believe that the First Trust and Savings Bank of Illinois has never claimed any interest in the lands described in the complaint except a lien thereon by virtue of the mortgage for $40,000 hereinbefore referred to, and that since the payment of said mortgage, as hereinbefore stated, said Company has not claimed any interest in said lands.

TWENTY-EIGHTH. These defendants respectively aver that if the complainant ever had any cause of action or suit for or concerning any of the matters in said amended bill mentioned, which these defendants respectively do in no sort admit, the complainant had full cognizance of all matters and things constituting such cause of action prior to the first day of March, 1905, and complainant is guilty of gross laches in not bringing suit upon such cause of action before the lands described in the amended bill were conveyed to said Linn and Lane Timber Company and pray that because of such laches complainant be not awarded any relief in this suit, and that its said amended bill be dismissed.

TWENTY-NINTH. These defendants respectively are informed and believe that Harry C. Barr

and John J. Jaggy each left heirs who are now living and within the jurisdiction of this court, but the names and places or residence of such **[107]** heirs are unknown to these defendants respectively; and these defendants respectively say that they are advised and believe that said heirs are necessary and indispensable parties to this suit, and pray that said amended bill be dismissed because said heirs have not been made parties to the same.

And these defendants respectively deny all and all manner of unlawful combinations and confederacy wherewith they are charged by said amended bill; without this, there is any other matter, cause or thing in said amended bill of complaint contained material to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants, all which matters and things these defendants are ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

N. O. WERNER.
C. A. SMITH.
FRED A. KRIBS.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
Of Counsel for said Nils O. Werner and Charles A. Smith.
ALBERT H. TANNER,
Of Counsel for said Frederick A. Kribs.

Answer of Nils O. Werner and Others. Filed Jan. 29, 1909. G. H. Marsh, Clerk. **[108]**

And afterwards, to wit, on the 29th day of January, 1909, there was duly filed in said court an answer of the Linn and Lane Timber Company, in words and figures as follows, to wit: **[109]**

[Answer of Linn and Lane Timber Co. to Amended Bill.]

(Title of Court and Cause.)

The answer of Linn and Lane Timber Company, one of the defendants, to the amended bill of complaint of the United States of America, the complainant,

This defendant, now and at all times hereafter saving and reserving to itself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said amended bill of complaint contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

FIRST. This defendant avers that if the complainant ever had any cause of suit or action against this defendant for or in respect of the several allegations and complaints in complainant's said amended bill contained, or any of them, the same accrued to the complainant upwards of six years before the filing of the bill of complaint in this suit against this **[110]** defendant, or the suing out process thereon against this defendant; and that the bill of complaint in this suit against this defendant

was not filed, nor was the process thereon against this defendant issued within six years after the date of the issuance of the several patents, which complainant in its said amended bill prays to have annulled and set aside; and this defendant claims the benefit of an Act of Congress respecting the limitation of suits by the United States to vacate and annul patents, approved March 3, 1891, and entitled "An Act to amend section eight of an Act approved March third, 1891, entitled An Act to repeal timber culture laws and for other purposes," in bar of the complainant's said bill and all the relief sought by the complainant in this suit; and this defendant prays that it may have the same benefit from said Act as if it had formally pleaded the same.

SECOND. This defendant, insisting on its aforesaid defense, for further answer admits that the First Trust and Savings Bank of Illinois has been and is a corporation, duly organized under the laws of the State of Illinois, and that defendants Nils O. Werner and Eva C. Werner are and have been husband and wife, and that the lands described in paragraph III of the said amended bill were a part of the public domain of the complainant prior to the month of June, 1900, and that the complainant had the legal title to the same until the 12th day of August, 1902; but this defendant denies that complainant has been the owner of any equitable title, or of any other right, title, or interest whatsoever, in any of said lands since the said last mentioned date.

THIRD. This defendant denies that S. A. D. Puter, C. A. Smith, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers, Frederick A. Kribs,

John A. Willd, or any of them, either together with other persons, or otherwise, ever entered into a conspiracy or agreement to defraud the complainant out of the title to the **[111]** lands described in the said amended bill, or any of such lands. And the defendant says it is not true that it was ever understood or agreed between the persons named in this paragraph, or any of them, that S. A. D. Puter should solicit or procure any person, either together with himself or otherwise, to make application for or entry on any of said lands, under any Act of Congress or otherwise, or that said Puter should procure or obtain from any person filing on any of said lands any agreement or promise that the title which such person might acquire from the complainant should enure to the benefit of any persons named in this paragraph, or that any person after filing on any of said lands, after receiving certificate showing that he had been permitted to file thereon, should or would execute or deliver to said C. A. Smith, or to said John A. Willd, any deed or other conveyance of any of said lands, or execute or deliver to Frederick A. Kribs or S. A. D. Puter any note, or any mortgage on any of said lands; or that said Puter should promise any person to pay any expense of filing or of making proof, or the price required to be paid to the complainant, or any part of such expense or purchase price.

FOURTH. This defendant has no reason to doubt, and therefore believes, that applications to enter and purchase the several tracts of land described in the amended bill, under the Act of Congress in said bill referred to, were made by the several entrymen and entrywomen in said amended

bill named, at the United States Land Office at Roseburg, Oregon, at or about the times in said amended bill stated, and that each application was verified by the oath of the person making such application, and filed on the date mentioned in the amended bill, and that each application was for the land in that behalf described in said amended bill, except that the land applied for by John L. Green **[112]** was in section 35, and the land applied for by Zebulin Smith was the northwest quarter of section 34, and the land applied for by Thomas Wilson was in section 28, all in township 14, range 3 east.

FIFTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter solicited or procured any of said entrymen and entrywomen other than himself to make any of the aforesaid applications to purchase and enter said lands, and therefore leaves the complainant to make such proof thereof as it shall be able to produce.

SIXTH. This defendant says it is not true that any of said applicants, prior to making or filing his or her application to purchase or enter said lands, made a contract or agreement with S. A. D. Puter, whereby such applicant promised or agreed to purchase or enter said lands, or any part of the same, for the use or benefit of C. A. Smith, Frederick A. Kribs, Nils O. Werner, Robert F. Greacen, Hubert F. Rogers and John A. Willd, or any of them, or that any of said applicants, prior to making or filing his or her said application agreed to transfer, convey or set over any of said lands, to C. A. Smith or John A. Willd, or promised or agreed to execute or deliver

any note, secured by mortgage on any of said lands, to S. A. D. Puter or Frederick A. Kribs, or that S. A. D. Puter, prior to the making or filing his application, entered into any agreement with C. A. Smith or Frederick A. Kribs to transfer, or convey, or set over, any of said lands to said C. A. Smith or John A. Willd.

SEVENTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter, prior to the making or filing of said applications, promised or agreed to pay any of said applicants the sum of $100, or any other sum, or the expense of **[113]** filing or of making final proof on any of said lands, or the purchase price for any of said lands, or any part of such expense or purchase price, and defendant therefore leaves the complainant to make such proof thereof as it shall be able to produce.

EIGHTH. This defendant has no reason to doubt, and therefore believes that the Timber aud Stone Sworn Statements mentioned in the amended bill, contained and set forth, respectively, the several matters which in that behalf are in said amended bill specified, but for greater certainty this defendant craves leave to refer to said statements when produced.

NINTH. This defendant has no reason to doubt, and therefore believes, that upon filing the aforesaid statements, the Register of said United States Land Office posted a notice of each application as required by law, and furnished each applicant a copy of such notice for publication in a newspaper as required by law, and that satisfactory evidence that said notices

had been so published in a newspaper was furnished to said Register, and that the applicants, respectively, furnished satisfactory evidence to said Register that the land covered by his or her application or entry was unfit for cultivation and valuable chiefly for timber, and that it was unoccupied and without improvement, either mining or agricultural, and that it apparently contained no valuable deposits of gold, silver, cinnabar, copper or coal; and that upon submission of such proof the officers of said Land Office received from each applicant $400 as payment for the land described in the application of such applicant at the rate of $2.50 per acre, and permitted each applicant to enter the land described in his or her application, and issued to each applicant a certificate of purchase, as stated in said amended bill, but for greater certainty as to said final proofs and certificates of purchase this defendant craves leave **[114]** to refer to the same when produced.

TENTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that S. A. D. Puter caused any of the notices referred to in the foregoing paragraph to be published in a newspaper or furnished to the Register of said Land Office evidence that any of said notices had been published in a newspaper, or procured any of the applicants to furnish any evidence to said Register, and defendant therefore leaves the complainant to make such proof thereof as it shall be able to produce.

ELEVENTH. This defendant is informed and believes that defendant Frederick A. Kribs resided in the State of Oregon during the years 1900 to 1903,

both inclusive, and that during this period, he was engaged in buying and selling timber lands situated in the States of Oregon and California, and that during said period defendant Charles A. Smith resided in the City of Minneapolis, in the State of Minnesota; that on or about the first day of January, 1900, it was agreed between said Kribs and Smith that said Kribs might from time to time submit to said Smith lists of timber lands in said Oregon and California, acquired or bargained for by him, the said Kribs, together with information concerning the timber on such lands, and the price paid or bargained to be paid for the same by said Kribs, and that said Smith might thereupon purchase the lands so submitted at the price paid or bargained to be paid for the same by said Kribs, with a reasonable amount per acre added to such price, which amount to be added was thereafter fixed and agreed upon by said Kribs and Smith to be the sum of twenty-seven and one-half cents per acre; that said agreement was modified on the 21st day of December, 1901, so that the price to be paid by said Smith thereafter under said agreement was to be fifty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such **[115]** lands, and said agreement was again modified on the 5th day of December, 1902, so that the price to be paid by said Smith under said agreement during the following twelve months was to be thirty cents per acre in addition to the price paid or bargained to be paid by said Kribs for such lands; that said Smith being a large purchaser of timber lands in said States during said period, it was considered that if it should be generally known in any

locality that said Smith was purchasing timber lands in such locality such knowledge would tend to unduly advance prices, and with a view of acquiring timber lands at a reasonable price, it was further understood and agreed between said Kribs and Smith, that the latter might designate persons other than himself in whose names title might be taken to such lands as said Smith might purchase pursuant to said agreement.

TWELFTH. This defendant is informed and believes that between the 15th day of April and the 17th day of May, 1900, defendant Frederick A. Kribs furnished the aforesaid entrymen and entrywomen, respectively (except S. A. D. Puter and Sadie E. Puter), the sum of $600 to enable them to pay to the complainant the purchase price of $400 mentioned in the amended bill, and the expense of making final proof, and that the money so furnished was used by said entrymen and entrywomen, respectively, to pay such purchase price and expense, and that as security for the money so furnished said Kribs received from each of said entrymen and entrywomen the mortgage for $600 referred to in said amended bill. And this defendant is informed and believes that between the 15th day of April and the 20th day of May, 1900, said Kribs bargained with the entrymen and entrywomen named in the amended bill, including S. A. D. Puter and Sadie E. Puter, for the purchase from them, respectively, at the price of $5.25 per acre, of the land for which said entrymen and entrywomen had theretofore respectively made and filed the timber and stone [116] sworn statements

described in the amended bill, and after he had so bargained for the purchase of said lands said Kribs offered the same to defendant C. A. Smith in accordance with the aforesaid agreement between them, and said Smith thereupon accepted said lands, and paid for the same $5.25 per acre, and twenty-seven and one-half cents per acre additional, in accordance with the said agreement, which was then the fair and full value of said lands, and having so accepted said lands and paid for the same, said Smith, in accordance with the said agreement, directed the conveyances from said entrymen and entrywomen, respectively, to be made to John A. Willd, and pursuant to such direction, deeds for said lands from said entrymen and entrywomen, respectively, were thereupon executed and delivered to said John A. Willd, which deeds were also executed by the husband and by the wife of each of the entrywomen and entrymen who was married, and said deeds contained respectively a covenant on the part of the entrymen and entrywomen, executing the same, that he or she and his and her heirs, executors and administrators, would warrant and defend the title to the land conveyed against the lawful claims and demands of all persons whomsoever.

THIRTEENTH. This defendant is informed and believes that Frederick A. Kribs, Charles A. Smith and John A. Willd, respectively, had no notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill prior to the commencement of this suit, and that in furnishing the money and taking the mortgages re-

ferred to in the foregoing paragraph, and in accepting and paying for the conveyances referred to in said paragraph, said Kribs, Smith and Willd respectively, acted in good faith, each believing that said entrymen and entrywomen respectively, could then rightfully and lawfully mortgage, sell and convey the lands covered by their respective entries. [117]

FOURTEENTH. This defendant does not know and cannot set forth as to its belief or otherwise whether or not it is alleged or is the fact that any statement or representation in any of the applications or final proofs referred to in the amended bill was false, or fraudulent, or untrue, or made with intent to deceive or defraud the complainant out of the use of, or title to, or possession of, any of said lands, and this defendant therefore leaves complainant to make such proof thereof as it may be able to produce.

FIFTEENTH. This defendant admits that on the 12th day of August, 1902, complainant issued patents to said entrymen and entrywomen and thereby granted and conveyed to them respectively the land covered by their respective applications and entries.

SIXTEENTH. This defendant has been informed and believes that soon after the issuance of the final certificates mentioned in the amended bill, complainant suspended the issuance of patents for the lands covered by said final certificates, and that complainant thereupon for a period of nearly two years investigated and examined all matters and things relating to the entries described in the

amended bill, and that complainant did not issue the patents hereinbefore referred to until said investigation and examination had been made and completed to the satisfaction of the complainant.

SEVENTEENTH. This defendant has no reason to doubt and therefore believes, that John A. Willd and his wife conveyed said lands to Robert F. Greacen on November 2d, 1900, and that said Greacen conveyed said lands to Hubert E. Rogers on February 11th, 1901, and that said Rogers conveyed said lands to Nils O. Werner on December 21, 1904. And this defendant is informed and believes that each of said conveyances was made at the [118] instance and request of said Charles A. Smith, and that each of said grantees took title under the conveyance to him for the use and benefit of and in trust for said Smith, and that said Smith procured said conveyances to be made for the purpose of procuring a loan on said lands without disclosing that he was the owner thereof, or that he was mortgaging the same. And this defendant is informed and believes that on December 21, 1904, after said lands had been so conveyed to said Werner, said Charles A. Smith procured a loan of forty thousand dollars on the security of a promissory note for that sum made by said Werner to one Charles M. Amsden, and a mortgage on said lands securing said note, executed by said Werner and his wife, to said Amsden, which said note and mortgage were assigned and transferred by said Amsden to defendant, the First Trust and Savings Bank, on the 10th day of January, 1905, and that said loan and the said note and mortgage secur-

ing the same were afterwards fully paid and satisfied by said Charles A. Smith.

EIGHTEENTH. This defendant says it is not true that any of the deeds referred to in the next foregoing paragraph was given to prevent complainant from recovering any of said lands.

NINETEENTH. This defendant says that on or about the 31st day of May, 1906, it was duly organized as a corporation under the general laws of the State of Minnesota, and its certificate of incorporation was executed by Charles A. Smith, Johanna A. Smith, and John Lind, and was recorded in the office of the Secretary of State for said State of Minnesota, on May 24, 1906, but said certificate was not executed by Vernon Smith. And this defendant says that it was not organized for any purpose except as stated in said certificate of incorporation in the following words, to wit: "To buy, hold and sell timber lands and tenements in the United States of America and to conduct forestry, mining and agricultural operations on the same; **[119]** to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develope electric energy and other power for the operation of its works and the transportation of its products and for sale."

TWENTIETH. This defendant says it is not true that it was organized by C. A. Smith or any other person with intent to defraud or deceive complainant, or to prevent complainant from recovering any of the lands described in the amended bill.

TWENTY-FIRST. This defendant says that on or about the 25th day of June, 1906, it caused to be filed in the office of the Secretary of State for the State of Oregon a certified copy of its said certificate of incorporation, and a power of attorney constituting and appointing Frederick A. Kribs as its attorney in fact and agent in and for the State of Oregon, but this defendant says it is not true that C. A. Smith or any other person, caused such certified copy or such power of attorney to be filed in said office for the purpose of preventing complainant from recovering any of the lands described in said amended bill.

TWENTY-SECOND. This defendant admits that since said certificate and power of attorney were so filed in the office of the Secretary of State for said State of Oregon, C. A. Smith and F. A. Kribs have pretended and claimed that said Kribs has been and is attorney in fact in and for said State of Oregon for this defendant.

TWENTY-THIRD. This defendant says that it was organized with a capital stock of one hundred thousand dollars, divided into one thousand shares of one hundred dollars each; that on **[120]** the 4th day of June, 1906, defendant Charles A. Smith and Johanna A. Smith, his wife, executed and acknowledged three certain deeds in which this defendant was named as grantee, all dated on said day; that one of

said deeds was for the lands described in the amended bill and certain other lands in Linn County, Oregon, and is one of the deeds referred to in paragraph XVI of the amended bill; that one of said three deeds was for certain lands in Lane County, Oregon, then owned by said Smith, and one was for certain lands in Douglass County, Oregon, then also owned by said Smith; that at a meeting of the board of directors of this defendant, held at the City of Minneapolis in the State of Minnesota, on the 9th day of June, 1906, said Charles A. Smith offered to convey to this defendant the lands described in said three deeds and to accept as a consideration for such conveyance the said capital stock of this defendant, which offer was on said day, and at said meeting accepted by this defendant, and pursuant thereto said three deeds were on said date delivered by said Charles A. Smith to this defendant and the said capital stock of this defendant was at the same time issued by this defendant in accordance with directions given by said Charles A. Smith, as follows: One share thereof to Johanna A. Smith, one share thereof to John Lind, and nine hundred and ninety-eight shares thereof to said Charles A. Smith; that in order to perfect the title to the lands which said Smith agreed to convey to this defendant for said stock, said Smith, on August 15, 1907, procured Nils O. Werner and Eva C. Werner, his wife, to execute and deliver to this defendant the deed from them referred to in said paragraph XVI of the amended bill; and this defendant says that it purchased the lands described in said amended bill at the time and in the manner and for the consideration aforesaid, in good faith, believ-

ing that Charles A. Smith and Nils O. Werner were then well and lawfully seized of said lands in fee [121] simple and could rightfully and lawfully convey the same to this defendant, and this defendant had then no notice or knowledge whatsoever of any claim in or to any of said lands on the part of the complainant.

TWENTY-FOURTH. This defendant admits that the aforesaid two deeds from Charles A. Smith and Nils O. Werner, the same being the deeds referred to in paragraph XVI of the amended bill, were filed for record in the office of the Recorder of Conveyances for Linn County, Oregon, on September 9th, 1908, but denies that they were so filed by Charles A. Smith.

TWENTY-FIFTH. This defendant says it is not true that either of the deeds referred to in the next foregoing paragraph was without consideration, or that this defendant had notice or knowledge of any of the alleged conspiracies, frauds, or irregularities complained of in the amended bill, or that either of the two deeds last above referred to was for the use or benefit of Charles A. Smith, or that either of said two deeds was executed for the purpose of preventing complainant from recovering said lands, or any part of the same, or that said deed from Charles A. Smith was executed on any other date that the date on which it purports to have been executed.

TWENTY-SIXTH. This defendant says that it does not know and cannot state as to its belief or otherwise whether or not it is alleged or is the fact that the complainant did not know of the existence of the deeds referred to in paragraph XVI of the

amended bill, until the same were offered for record, or that complainant had no means of discovering the existence of said deeds until they were offered for record, or that complainant prior to the commencement of the suit caused any search or inquiry to be made to ascertain who had some right, title, or interest in or to any of the aforesaid lands, and therefore leaves complainant to make such proof thereof as it **[122]** may be able to produce.

TWENTY-SEVENTH. This defendant says that it is not true that all the capital stock of this defendant has been or is held for the use or benefit of defendant Charles A. Smith, or that said Smith has at all times been or is the president of this defendant, but on the contrary that the facts respecting said matters are as follows: On February 15th, 1908, said Smith sold and transferred fifteen shares of said stock to Charles J. Johnson, of the City of Minneapolis, who has since been and now is the owner of the same. On February 14th, 1908, said Smith transferred three hundred shares of said stock to the Swedish-American National Bank of Minneapolis to secure promissory notes and other obligations given by him to said bank, amounting in the aggregate to upwards of $350,000. On February 15th, 1908, said Smith transferred ten shares of said stock to Charles J. Swanson of Fridley, Minnesota, to secure a promissory note for $5000 made by said Smith, and said Swanson has since held and now holds said ten shares as such security. On October 31, 1908, said Smith transferred to said Swedish-American National Bank additional two hundred and ten shares of said stock, two hundred and eight of

which direct to said Bank, and one each to B. F. Nelson and C. C. Wyman in trust for said Bank, to further secure his, the said Smith's aforesaid promissory notes and other obligations to said Bank. On said October 31, 1908, said Charles J. Johnson transferred his aforesaid fifteen shares to said Swedish-American National Bank to secure promissory notes and other obligations given by him to said Bank, amounting to upwards of $50,000. Said Swedish-American National Bank held the five hundred and ten shares transferred to it as hereinbefore stated until on or about the first day of December, 1908, at which time it sold, assigned, and transferred to the Northwestern National Bank of Minneapolis, the aforesaid promissory notes and other [123] obligations held by it against said Smith and Johnson, and the said shares of stock held as security for the same, and the said Northwestern National Bank has since held, and now holds, said five hundred and twenty-five shares of the stock of this defendant as security for said promissory notes and other obligations of said Smith and Johnson, and there is now unpaid on said promissory notes and other obligations more than $250,000.

TWENTY-EIGHTH. This defendant believes that the First Trust and Savings Bank of Illinois has never claimed any interest in the lands described in the complaint except a lien thereon by virtue of the mortgage for $40,000, hereinbefore referred to; and that since the payment of said mortgage, as hereinbefore stated, said Company has not claimed any interest in said lands.

TWENTY-NINTH. This defendant avers that

if the complainant ever had any cause of action or suit for or concerning any of the matters in said amended bill mentioned, which this defendant does in no sort admit, the complainant had full cognizance of all matters and things constituting such cause of action prior to the first day of March, 1905, and complainant is guilty of gross laches in not bringing suit upon such cause of action before the lands described in the amended bill were conveyed to this defendant and prays that because of such laches complainant be not awarded any relief in this suit, and that its said amended bill be dismissed.

THIRTIETH. This defendant is informed and believes that Harry C. Barr and John J. Jaggy each left heirs who are now living and within the jurisdiction of this court, but the names and places of residence of such heirs are unknown to this defendant; and this defendant says that it is advised and believes that said heirs are necessary and indispensable parties to this suit, and prays that said amended bill be dismissed because said heirs have not been made parties to the same. **[124]**

And this defendant denies all and all manner of unlawful combinations and confederacy wherewith it is charged by said amended bill; without this, there is any other matter, cause or thing in said amended bill of complaint contained material to, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of this defendant, all which matters and things this defendant is ready and willing to aver, maintain and prove as this Honorable Court shall direct; and humbly prays to be hence

dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

[Seal] LINN AND LANE TIMBER COMPANY.

By B. F. NELSON,
President.

C. C. WYMAN,
Secretary.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
Of Counsel for said Defendant.

Answer of Linn and Lane Timber Company. Filed January 29, 1909. G. H. Marsh, Clerk. [125]

And afterwards, to wit, on the 8th day of July, 1909, there was duly filed in said court a replication to answer of Nils O. Werner et al., in words and figures as follows, to wit: [126]

[Replication to Joint and Several Answers of Nils O. Werner et al. to Amended Bill.]

(Title of Court and Cause.)

The replication of J. R. Wyatt, Assistant United States Attorney for the District of Oregon, United States of America, to the joint and several answers of Nils O. Werner, Chas. A. Smith and Frederick A. Kribs, defendants to the amended bill in equity against them and others, by the United States District Attorney for Oregon, in behalf of said United States, in the Circuit Court of the said United States, this repliant for the said United States, saving and

reserving all advantage of exceptions to the said answer, for replication thereto says: that he for the said United States will aver and prove his said bill in equity to be true, certain and safe in law to be answered unto, and that the said answer is uncertain, untrue and unsafe to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be **[127]** replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant for the said United States is and will be ready to aver and prove as this Honorable Court shall direct and for the said United States, he prays as in and by his said bill of complaint in equity he has already prayed.

J. R. WYATT,
Attorney for Complainant.

United States of America,
District of Oregon,—ss.

I hereby accept service on me of the within Replication, filed by complainant herein, at Portland, Oregon, on this 20th day of May, 1909.

JOHN M. GEARIN,
One of Solicitors for Defendants.

Replication to Answer of Nils O. Werner et al. Filed July 8, 1909. G. H. Marsh, Clerk. **[128]**

And afterwards, to wit, on the 8th day of July, 1909, there was duly filed in said court a replication to answer of Linn and Lane Timber Company, in words and figures as follows, to wit: **[129]**

[Replication to Answer of Linn and Lane Timber Co. et al. to Amended Bill.]

(Title of Court and Cause.)

The replication of J. R. Wyatt, Assistant United States District Attorney for the District of Oregon, to the answer of the defendant, the Linn and Lane Timber Company, a corporation, and other defendants to the amended bill in equity exhibited against it and others by the United States District Attorney for Oregon, in behalf of said United States in the Circuit Court of the said United States, this repliant for the said United States, saving and reserving all advantage of exceptions to the said answer, for replication thereto says: that he for the said United States will aver and prove his said bill in equity to be true, certain and safe in law to be answered unto, and that the said answer is uncertain, untrue and unsafe to be replied unto by this repliant; without this, that any other matter or thing whatsoever in said answer contained material or effectual in law to be replied unto, confessed [130] and avoided, traversed or denied, is true. All which matters and things this repliant for the said United States is and will be ready to aver and prove as this Honorable Court shall direct and for the said United States, he prays as in and by his said bill of complaint in equity he has already prayed.

J. R. WYATT,
Attorney for Complainant.

United States of America,
District of Oregon,—ss.

I hereby accept service on me of the within Replication filed by complainant herein, at Portland, Oregon, on this 20th day of May, 1909.

JOHN M. GEARIN,
One of Solicitors for Defendant.

Replication to Answer of Linn & Lane Timber Company, et al. Filed July 8, 1909. G. H. Marsh, Clerk. **[131]**

And afterwards, to wit, on Friday, the 18th day of February, 1910, the same being the 117th judicial day of the regular October, 1909, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[132]**

[Order Setting Cause for Final Hearing.]

(Title of Court and Cause.)

Now, at this day, on motion of Mr. John McCourt, United States Attorney, IT IS ORDERED that this cause be, and the same is hereby, set for final hearing on Monday, April 18, 1910. **[133]**

And afterwards, to wit, on the 18th day of April, 1910, there was duly filed in said court, objections to proposed amendment to Bill of Complaint, in words and figures as follows, to wit: **[134]**

[Objection of Charles A. Smith and The Linn and Lane Timber Co. to Proposed Amendment to Amended Bill.]

(Title of Court and Cause.)

Defendants Charles A. Smith and the Linn and Lane Timber Company, jointly and severally, object to the proposed amendment to the amended bill of complaint on the following grounds:

1. It does not appear that the notice of the motion for leave to amend, which is prescribed by Equity Rule 29 in case of amendment of a bill after replication, has been given to the other defendants in the suit who would be affected if the amendment was made.

2. It does not appear that the proposed amendment is not made for the purpose of veration or delay or that the matter of the proposed amendment is material, and could not with reasonable diligence have been sooner introduced into the Bill as required by Equity Rule 29.

3. The proposed amendment would not remedy the want of equity appearing on the face of the Bill.

4. The proposed amendment would enlarge complainant's case and change the character and quality of the relief.

5. The subject matter of the proposed amendment, if material, is in the nature of a cause of action at law, not within jurisdiction of equity.

6. The proposed amendment would render the Bill m*a*ltifarious. **[135]**

7. The proposed amendment contains the following impertinent matter: "Said lands are now of the

reasonable value of Four Hundred Thousand ($400,000) Dollars.

8. The entire proposed amendment is impertinent matter, because the value of the land at the time of the issuance of the final receiver's receipts less the amount then received by the complainant, would be the measure of damages not the value of the land at any subsequent date.

9. The proposed amendment would require new answers.

Dated April 18th, 1910.

JOHN LIND,
A. UELAND,
W. M. JEROME,
J. M. GEARIN,
Counsel for said Defendants.

Filed April 18, 1910. G. H. Marsh, Clerk United States Circuit Court, District of Oregon. **[136]**

And afterwards, to wit, on the 18th day of April, 1910, there was duly filed in said court an affidavit of John McCourt, in words and figures as follows, to wit: **[137]**

[Affidavit, Filed April 18, 1910, of John McCourt.]

(Title of Court and Cause.)

United States of America,
District of Oregon,—ss.

I, John McCourt, being first duly sworn, say that I am United States Attorney for the District of Oregon and that the proposed amendment to the bill of complaint herein offered by me as United States At-

torney, on or about the 18th day of February, 1910, is not and was not made for the purpose of vexation or delay and the same is material and relevant in this cause, and could not have been by affiant or by complainant, by reasonable diligence, sooner introduced into the bill; that complainant has had due notice of said proposed amendment, and by the allowance thereof will not be prejudiced in any way; that said amendment is offered in furtherance of justice and to prevent a multiplicity of suit.

JOHN McCOURT,
United States Attorney.

Subscribed and sworn to before me this 18th day of April, 1910.

[Seal]

J. W. WYATT,
Notary Public for Oregon.

Filed April 18, 1910. G. H. Marsh, Clerk, U. S. Circuit Court District of Oregon. **[138]**

And afterwards, to wit, on Monday, the 18th day of April, 1910, the same being the 7th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding,—the following proceedings were had in said cause, to wit: **[139]**

[Order of Submission of Motion for Leave to Amend Bill.]

(Title of Court and Cause.)

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and defendants

Nils O. Werner, Charles A. Smith and Linn & Lane Timber Company by Mr. John Lind, Mr. A. Ueland and Mr. John M. Gearin, of counsel; defendant Frederick A. Kribs, by Mr. A. H. Tanner, of counsel; defendants Thomas Wilson, Charles Barr, Neal D. Dozier, Edward Finley, Zebulin Smith, J. S. Phillips, Benjamin F. Kirk, and Elam Miller, by Mr. Louis H. Tarpley, of counsel; defendants James B. Cooley, Henry Blakely, Jacob W. Stillwell, John Harrison and Hugh Blakely, by Mr. W. W. Banks, of counsel: Whereupon, said plaintiff moves the Court for leave to amend its bill of complaint herein. And the Court having heard the arguments of Mr. John McCourt, United States Attorney, and of Mr. A. Ueland and Mr. John Lind, of counsel for defendants, will advise thereof. **[140]**

[Minutes—April 19, 1910—Hearing.]

And afterwards, to wit, on Tuesday the 19th day of April, 1910, the same being the 8th judicial day of the regular April, 1910, term of said court,—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding,—the following proceedings were had in said cause, to wit: **[141]**

[Order Allowing Pro Forma Motion to Amend Bill.]

(Title of Court and Cause.)

This cause was heard upon the motion of the plaintiff to amend its bill of complaint herein, and was argued by Mr. John McCourt, United States Attorney, and by Mr. A. Ueland and Mr. John Lind, of counsel for defendants; upon consideration whereof IT IS NOW HERE ORDERED AND AD-

JUDGED that said motion be, and the same is hereby, allowed *pro forma,* reserving said motion for further consideration at the termination of the evidence upon the final hearing of this cause as the Court shall determine.

And thereupon this cause comes on for final hearing upon the pleadings and the proofs, and the Court having heard the evidence now offered, and the hour of adjournment having arrived, the further hearing of this cause is continued until tomorrow, April 20, 1910. **[142]**

And afterwards, to wit, on the 22d day of April, 1910, there was duly filed in said court an Amendment to Bill of Complaint, in words and figures as follows, to wit: **[143]**

[Amendment of Bill (Filed April 22, 1910).]

(Title of Court and Cause.)

Comes now the United States of America by John McCourt, United States Attorney for the District of Oregon and by leave of the Court first had and obtained, amends its bill of complaint herein by adding a paragraph thereto designated as paragraph No. 13½ and therein alleges as follows:

13½.

That at the time of the issuance of the said patents to and for said *ands* as aforesaid, the same were of the reasonable value of Two Hundred Twenty-five Thousand ($225,000.00) Dollars and said lands are now of the reasonable value of Four Hundred Thousand ($400,000.00) Dollars and by reason of the fraudulent practices and representations of the de-

fendants, by which complainant was wrongfully induced to issue patents for said lands as hereinbefore alleged complainant was and is damaged in a sum of money equal to the full value of said lands, and complainant will be entitled to recover said sum herein in the event it shall for any reason be impossible or inequitable for the Court to decree a cancellation of said patents as hereinafter prayed.

Dated at Portland, Oregon, this 21st day of April, 1910.

JOHN McCOURT,
United States Attorney.

Filed April 22, 1910. G. H. Marsh, Clerk U. S. Circuit Court, District of Oregon. **[144]**

And afterwards, to wit, on the 22d day of April, 1910, there was duly filed in said court an Answer to Amendment to Bill of Complaint, in words and figures as follows, to wit: **[145]**

[Joint and Several Answer of Linn and Lane Timber Co. et al. to Amendment of Bill.]

(Title of Court and Cause.)

The joint and several answer of Linn and Lane Timber Company, Charles A. Smith and Frederick A. Kribs, to the matter contained in the amendment to the bill of complaint filed April 21, 1910:

These defendants, respectively, now and at all times hereafter saving to themselves all and all manner of benefit of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties and imperfections in the said amendment contained, and hereby expressly saving and reserving an excep-

tion to the order permitting said amendment to be made, severally answering the averments in said amendment contained say as follows:

1. These defendants, respectively, deny that the value of the land described in the amended bill of complaint, at the time of the issuance of the patents therein described, or at any time prior thereto, was the sum of two hundred twenty-five thousand dollars, or any other or greater sum than twenty-four **[146]** thousand seven hundred and fifty-two dollars; and these defendants, respectively, deny that said lands are now of the reasonable value of four hundred thousand dollars, or of any other or greater value than forty-four thousand eight hundred dollars, and these defendants respectively deny that the complainant is, or has ever been, damaged in any sum or amount whatsoever by reason of the issuance of said patents, or any of them, or by reason of any matter or things whatsoever in said bill contained; and these defendants respectively deny that the complainant is, or will be, entitled to recover any sum or amount whatsoever against either or any of these defendants.

2. These defendants, respectively, by leave of court first obtained, further answering the bill of complaint, say that soon after said entries were made, information was lodged in complainant's Department of the Interior, charging that all said entries were fraudulent and void; that an order was thereupon made by said Department directing patents not to issue on said entries; that said Department thereupon instituted and for a period of more than two years carried on an examination of all matters pertaining to the alleged frauds in said entries; that

much evidence was adduced in said examination, and in and by said examination and evidence the matters and things in the amended bill complained of were brought before the Secretary of said Department for his decision; that being fully informed in the premises said Secretary thereupon in and by Department Letter L. R. R. Div. 932–1902, dated May 17th, 1902, and directed to the Commissioner of the General Land Office decided and determined that all said entries were lawfully made and valid and that patents should be issued on the same, that said patents were [147] thereupon issued, and the same are the patents described in the bill of complaint. And these defendants respectively say that all said matters having been so examined, heard and decided by complainant's said Secretary of the Interior, complainant is and ought to be barred from maintaining its said bill of complaint in this court and that said bill should be dismissed.

LINN ANS LANE TIMBER COMPANY.
CHARLES A. SMITH,
By A. UELAND,
Their Attorney.
JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
Of Counsel for said Defendants.
FREDERICK A. KRIBS,
By ALBERT H. TANNER,
Attorney and Counsel for said Frederick A. Kribs.

Filed April 22, 1910. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. [148]

And afterwards, to wit, on Tuesday, the 3d day of May, 1910, the same being the 20th judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[149]**

[Order Appointing Special Examiner, etc.]

(Title of Court and Cause.)

Now, on this day comes the complainant by Mr. John McCourt, the United States Attorney for the District of Oregon, and the defendants, The Linn and Lane Timber Company and Charles A. Smith, by Mr. John Lind, Mr. A. Ueland and Mr. John M. Gearin, their counsel, and defendant, Frederick A. Kribs, by Mr. A. H. Tanner, his counsel, and thereupon said defendants moved the court for an order appointing some qualified person at the City of Minneapolis, in the State of Minnesota, to act as Examiner of this Court to take orally such testimony and evidence as the parties hereto decide to be taken at said City of Minneapolis.

It is therefore ORDERED that Mr. George F. Hitchcock, Jr., of Minneapolis, Minnesota, be, and he is hereby, appointed as Special Examiner of this Court with power and authority to take and transmit to this Court such depositions and testimony in this **[150]** cause as the parties hereto decide to be taken at said City of Minneapolis, and at such time between the first and tenth days of June, 1910, as may suit the convenience of said Examiner and of the parties hereto; and that said Examiner extend said testimony

when so taken and report the same to this Court with all convenient speed, said testimony when so taken to be used upon the trial of this cause.

Dated May 3, 1910.

R. S. BEAN.
Judge.

Filed May 3, 1910. G. H. Marsh, Clerk, U. S. Circuit Court, District of Oregon. **[151]**

And afterwards, to wit, on Thursday, the 5th day of May, 1910, the same being the 22d judicial day of the regular April, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause to wit: **[152]**

[Order Re Taking of Evidence, etc.]

(Title of Court and Cause.)

The complainant, by Mr. John McCourt, the United States Attorney for the District of Oregon, and defendants, the Linn and Lane Timber Company, and Charles A. Smith, by Mr. John Lind, Mr. A. Ueland, and Mr. John M. Gearin, their counsel, appearing in open court and consenting thereto, it is ordered:

1. That the time of the complainant for the taking of its evidence in chief in this cause, be, and the same hereby is, closed, the same having been taken orally before the Court, except that the complainant, if it be so advised, may take as its evidence in chief the testimony of Charles L. Trabert between the first and tenth days of June, 1910, at Minneapolis, Minne-

sota, before George F. Hitchcock, Jr., Special Examiner, appointed such by order of this court, entered in this cause May 3, 1910.

2. That the time of the defendants for taking their evidence in this cause be, and the same is, hereby limited to and including the tenth day of June, 1910, unless such time be extended by stipulation in writing between counsel in the case.

3. That complainant have until June 25, 1910, to take such evidence in rebuttal in this cause as it may be advised.

4. That the Clerk of this Court be, and is hereby, directed to transmit to George F. Hitchcock, Jr., at his office in the Federal Building in the City of Minneapolis, State of Minnesota, [153] before May 20, 1910, the documents introduced as evidence in this cause marked United States Exhibits Numbers respectively 155 to 161, both inclusive, for the purpose of having the same used in the taking of the evidence for the defendants in this cause before said George F. Hitchcock, Jr., as Special Examiner heretofore appointed for that purpose.

Dated May 5, 1910.

R. S. BEAN,
Judge.

Filed May 5, 1910. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon. [154]

And afterwards, to wit, on Wednesday, the 27th day of July, 1910, the same being the 91st judicial day of the regular April, 1910, term of said court —Present, the Honorable ROBERT S. BEAN,

United States District Judge presiding—the following proceedings were had in said cause, to wit: **[155]**

[Minutes—July 27, 1910—Hearing.]

(Title of Court and Cause.)

[Order Allowing Filing of Amendment to Amended Bill, etc.]

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and defendants Nils O. Werner, C. A. Smith and Linn & Lane Timber Company, by Mr. John Lind and Mr. John M. Gearin, of counsel, and defendant Frederick A. Kribs, by Mr. Albert H. Tanner, of counsel: Whereupon, the final hearing of this cause is resumed. And the Court having heard the arguments of counsel, will advise thereof. Whereupon, IT IS ORDERED that said plaintiff be, and it is hereby, allowed ten days from this date within which to file a brief herein, and IT IS ORDERED that the plaintiff be, and it is hereby, allowed to file an amendment to its amended bill of complaint herein. **[156]**

And afterwards, to wit, on the 6th day of August, 1910, there was duly filed in said court, an Amendment to Bill of Complaint, in words and figures as follows, to wit: **[157]**

[Amendment (Filed August 6, 1910) of Paragraph XIII of Bill.]

(Title of Court and Cause.)

Now comes John McCourt, United States Attorney for the District of Oregon, and by leave of Court first had and obtained in the above-entitled cause, hereby

amends paragraph XIII of the bill of complaint herein to read as follows:

XIII.

And your orator further shows unto your Honors and alleges, that by reason of the facts hereinbefore stated, a fraud has been perpetrated on the complainant and it has been deprived of the legal title to the land hereinbefore described, contrary to law and good conscience, and that the officers of the United States Land Office at Roseburg, Oregon, and of the Department of the Interior and the General Land Office of the United States, and the president of the United States, had no knowledge of the facts as hereinbefore set out, and did not discover such facts until a long time after the issuance of such patents, and by the exercise of reasonable diligence could not have discovered these facts any sooner; that after certificates upon final proof were issued by the United States Land Office at Roseburg, Oregon, as hereinbefore set forth, and during the years 1900, 1901 and 1902, and prior to the issuance of patents as hereinbefore [158] set forth for the lands hereinbefore described, the defendants Frederick A. Kribs, C. A. Smith, Stephen A. D. Puter, and other persons acting for them and in their behalf, secured the respective entrymen and entrywomen hereinbefore named each to execute and subscribe affidavits and depositions in which it was falsely set forth and represented, in effect, to complainant that each of said entrymen and entrywomen respectively had entered the land in good faith, to appropriate it to his or her own exclusive use and benefit, and that he or she had not, prior to making said entry, directly or indirectly

made any agreement in any way or manner, with any person or persons whomsoever, by which the title which he or she might acquire from the Government of the United States should inure to the benefit of any person except himself or herself, and that he or she did not apply to purchase the land included in the respective entries on speculation; and thereby, and by means of said false and fraudulent final proofs as hereinbefore set forth made by the said entrymen and entrywomen respectively, and by means of affidavits of like tenor and effect subscribed and executed by the defendants Frederick A. Kribs, Stephen A. D. Puter, and other persons secured by them to make like affidavits, all of which were filed in the General Land Office of the United States prior to the issuance of said patents, issuance of said patents was procured and said false and fraudulent representations were concealed from the complainant and complainant did not ascertain that a gross fraud had been perpetrated upon it, or that said representations of said entrymen and entrywomen, and of and in behalf of said defendants who were not entrymen, were false and fraudulent and untrue, until January, 1905, at which time complainant was conducting a vigorous investigation of charges of violations of the Public Land laws in Portland, Oregon, when **[159]** a large number of said entrymen and entrywomen, together with the defendants Frederick A. Kribs and Stephen A. D. Puter, and also other persons who had acted with them in the transactions hereinbefore set forth, disclosed to complainant that the Timber and Stone land entries hereinbefore set forth and described were false and fraudulent as here-

inbefore set forth; that prior to said January, 1905, complainant had no means or opportunity of ascertaining the false and fraudulent representations that had been made to it relative to said Timber and Stone land entries hereinbefore set forth, and of the fraud that had been perpetrated upon it relative thereto, by reason of the concealment of said fraud by the defendants as aforesaid.

The foregoing amendment is submitted in the above form by consent of opposing counsel who do not require that a new formal amended bill of complaint be filed.

JOHN McCOURT.
United States Attorney for Oregon.

Amendment to bill of complaint. Filed Aug. 6, 1910. G. H. Marsh, Clerk. **[160]**

And afterwards, to wit, on Thursday, the 20th day of October, 1910, the same being the 16th judicial day of the regular October, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding—the following proceedings were had in said cause, to wit: **[161]**

(Title of Court and Cause.)

Decree.

Now, on this 20th day of October, this cause coming on for a final decree therein and it appearing to the Court that said cause was heretofore heard and tried before the Court on the pleadings of the respective parties therein and that upon said hearing and trial the complainant and the defendants introduced

testimony and evidence in support of their respective contentions, and thereafter said cause was argued and submitted to the Court and the same was taken under advisement, and the Court being now fully advised,

IT IS ORDERED, ADJUDGED AND DECREED that those certain patents issued by complainant and bearing date the 12th day of August, 1902, and purporting to convey the lands hereinafter described to the persons hereinafter mentioned, are hereby **[162]** declared to be void, and the same are hereby cancelled, annulled and set aside, that is to say, the patents issued to the following persons purporting to convey to them the lands described respectively as follows, to wit:

SADIE E. PUTER—Northeast Quarter (NE. ¼) of Section Twenty (20), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

Mrs. ELVIRA JACOBS—Northwest Quarter (NW. ¼) of Section Twenty-two (22), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

H. C. BARR—Southeast Quarter (SE. ¼) of Section Twenty-four (24), Township Fourteen (14) South, Range Two (2) East of the Willamette Meridian.

S. A. D. PUTER—Northwest Quarter (NW. ¼) of Section Twenty (20), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOHN J. JAGGY—Southeast Quarter (SE. ¼) of Section Thirty-four (34), Township Fourteen

(14) South, Range Three (3) East of the Willamette Meridian.

NEAL D. DOZIER—Southwest Quarter (SW. 1/4) of Section Thirty-four (34), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

ZEBULIN SMITH—Northwest Quarter (NW. 1/4) of Section Thirty-four (34), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

THOMAS WILSON—Northwest Quarter (NW. 1/4) of Section Twenty-eight (28), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JOHN L. GREEN—Northwest Quarter (NW. 1/4) of Section Thirty-five (35), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

J. S. PHILLIPS—Northeast Quarter (NE. 1/4) of Section Thirty-four (34), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

CHARLES BURLEY—Southeast Quarter (SE. 1/4) of Section Thirty-five (35), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

CHARLES BARR—Southwest Quarter (SW. 1/4) of Section Thirty-five (35), Township Fourteen (14), South Range Three (3), East of the Willamette Meridian.

EDWARD FINLEY—Northeast Quarter (NE. 1/4) of Section Thirty-five (35), Township Fourteen

(14) South, Range Three (3), East of the Willamette Meridian. **[163]**

DOUGLAS ADKINSON — Southwest Quarter (SW. ¼) of Section Twenty-four (24), Township Fourteen (14) South, Range Three (3), East of the Willamette Meridian.

HARRY SALTMARSH — Northwest Quarter (NW. ¼) of Section Twenty-four (24), Township Fourteen (14) South, Range Three (3), East of the Willamette Meridian.

JENNIE MOULTON—East Half of West Half (E. ½ W. ½) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

LUELLA BEEMAN—Lot Four (4), and the South Half of the Southeast Quarter (S. ½ SE. ¼) of Section Thirty-one (31), and Southwest Quarter of Southwest Quarter (SW. ¼ SW. ¼) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

GEORGE L. THOMPSON—Northwest Quarter (NW. ¼) of Section Fourteen (14), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

ISAAC R. BORUM—Southwest Quarter (SW. ¼) of Section Fourteen (14), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

BENJAMIN F. KIRK—Northeast Quarter (NE. ¼) of Section Fourteen (14), Township Fourteen (14) South, Range Three (3), East of the Willamette Meridian.

HUGH BLAKELY—Lot Four (4), and the South half of Southeast Quarter (S. ½ SE. ¼) of Section Thirty (30), and the Southwest Quarter of Southwest Quarter (SW. ¼ SW. ¼) of Section Twenty-nine (29), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

JAMES B. COOLEY—Lot Three (3) and the North Half of the Southeast Quarter (N. ½ SE. ¼) of Section Thirty-one (31), and the Northwest Quarter of the Southwest Quarter (NW. ¼ SW. ¼) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4), East of the Willamette Meridian.

FRANK W. BURFORD—Lot Two (2) and the South Half of the Northeast Quarter (S. ½ NE. ¼) of Section Thirty-one (31), and the Southwest Quarter of the Northwest Quarter (SW. ¼ NW. ¼) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4), East of the Willamette Meridian.

JOHN HARRISON—Lot One (1), and the North Half of the Northeast Quarter (N. ½ NE. ¼) of Section Thirty (30), and Northwest Quarter of Northwest Quarter (NW. ¼ NW. ¼) of Section Twenty-nine (29), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

HENRY B. BLAKELY—Lot Three (3) and the North Half of the Southeast Quarter (N. ½ SE. ¼) of Section Thirty (30) and the Northwest Quarter of Southwest Quarter (NW. ¼ SW. ¼) of Section Twenty-nine (29), Township Fourteen (14) South,

Range Four (4), East of the Willamette Meridian.
[164]

PETER BUFFINGTON — Southeast Quarter (SE. ¼) of Section Fourteen (14), Township Fourteen (14) South, Range Three (3) East of the Willamette Meridian.

JACOB W. STILLWELL—Lot One (1) and the North Half of the Northeast Quarter (N. ½ NE. ¼) of Section Thirty-one (31); the Northwest Quarter of the Northwest Quarter (NW. ¼ NW. ¼) of Section Thirty-two (32), Township Fourteen (14) South, Range Four (4) East of the Willamette Meridian.

ELAM MILLER—Northeast Quarter (NE. ¼) of Section Thirty-one (31), Township Fourteen (14) South, Range Three (3), East of the Willamette Meridian.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all deeds and conveyances of said lands above described, or any of them, made and executed by the defendants or any of them, and particularly mentioned and described in the bill of complaint herein, be and they are each and all hereby declared to be in fraud and violation of and subject to the rights of complainant and are hereby cancelled, annulled and set aside, and said defendants and each and all of them and their agents, servants and employees, are hereby enjoined and restrained from asserting, exercising or exerting any authority or control over said lands or any of them or over or in relation to the title to said lands or any part thereof by virtue of said deeds and conveyances

or any of them or otherwise; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the lands hereinbefore described, be and the same are hereby declared to be the property of complainant in fee simple, divested of all right, title or estate in law or equity claimed or asserted by defendants or either or any of them, and particularly the defendants C. A. Smith and the Linn and Lane Timber Company, and the said complainant is entitled to the immediate possession of all of said lands; and

IT IS FURTHER ORDERED that the application of complainant made prior to the hearing and trial of this **[165]** cause to amend the Bill of Complaint herein by adding thereto paragraph 13½ as follows:

"That at the time of the issuance of the said patents to and for said lands as aforesaid, the same were of the reasonable value of Two Hundred Twenty-five Thousand ($225,000.00) Dollars and said lands are now of the reasonable value of Four Hundred Thousand ($400,000.00) Dollars, and by reason of the fraudulent practices and representations of the defendants, by which complainant was wrongfully induced to issue patents for said lands as hereinbefore alleged, complainant was and is damaged in a sum of money equal to the full value of said lands and complainant will be entitled to recover said sum herein in the event it shall for any reason be impossible or inequitable for the Court to decree a cancellation of said patents as hereinafter prayed," be and the same is hereby denied.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that complainant recover of and from the defendants its costs and disbursements herein taxed and allowed at $1361.65.

Done and dated in open Court at Portland, Oregon, this 20th day of October, 1910.

R. S. BEAN,
Judge.

Decree. Filed October 20, 1910. G. H. Marsh, Clerk. **[166]**

[Testimony and Exhibits Taken and Introduced Before the Court.]

And, to wit, on the 9th day of August, 1910, there was duly filed in said court testimony and exhibits taken in open court, in words and figures as follows, to wit: **[167]**

(Title of Court and Cause.)

JOHN McCOURT, U. S. Attorney, for Government.

A. H. TANNER, Attorney for Defendant Kribs.

W. W. BANKS, Attorney for Defendants Cooley, Blakely, et al.

L. H. TARPLEY, Attorney for Defendants Wilson, et al.

DOLPH, MALLORY, SIMON & GEARIN, and UELAND, LIND & JEROME, Attorneys for Defendants Smith and Werner.

R. S. BEAN, District Judge. **[168]**

[Proceedings had at] Portland, Oregon, April 19, 1910, at 10 A. M.

COURT.—For the purpose of taking testimony in this case I will sustain the motion of the Government in regard to amending the pleadings, and permit the filing of the proposed amendments to the bill and the testimony which may be offered in support thereof, leaving the ultimate questions of its materiality and pertinence to the present controversy to be determined at the final hearing.

Mr. UELAND.—The defendants will save an exception to the ruling, and if it meets with the approval of the Court and District Attorney, we would like, in order to have the record in good form, to have the amendment filed separately instead of being interpolated in the bill, so that the answer would be made as merely an answer to the amendment without filing a new answer entirely.

COURT.—I think that will be satisfactory.

Mr. McCOURT.—I presume it will be understood that at the final argument, if there are any additional authorities or arguments we desire to make upon the questions involved it may be done at the final argument.

Mr. UELAND.—There is another matter I would like to bring to the attention of the Court. We are informed by Senator Gearin, our associate, that there was an understanding with the District Attorney, that such evidence as could would be taken in open court, but if the testimony of the Government should disclose that the defendants would need testimony of

persons in the east, we would have an opportunity to take that before an Examiner to be appointed before the case is submitted.

Mr. McCOURT.—I do understand. It was understood by Senator Gearin and myself that both the defense and the Government would probably be required under the circumstances in [*169—†1] the case to take some depositions. Wherever that might be necessary it is understood that we might agree upon proper parties.

Mr. GEARIN.—We will take all the testimony now that we have.

Mr. McCOURT.—In that connection I wish to state to the Court that an important witness of the Government whom I expected to have here and in fact whose evidence is largely responsible for the bringing of this case, is not here, namely, S. A. D. Puter, a man of whom your Honor has heard of from time to time in connections of this character. The subpoenas were issued some two months ago and placed in the hands of the Marshal for service. About a month ago Puter came in from the East or from somewhere; the attention of the Marshal was directed to his presence in the city, but for some reason he was not served. I understood until yesterday that he had been served, but the Marshal tells me that he called him up by phone and he promised to come and get his subpoena. Instead of that he goes East a day or so later, and was not served. I received a telegram from him in Scranton, Pennsyl-

[*Page number appearing at foot of page of original certified record.]
[†Original page-number of Testimony appearing at foot of page of testimony in original certified record.]

vania, on Sunday, or rather from his physician, stating that Mr. Puter had just been operated on in a hospital at Scranton. I had the United States Marshal there go and investigate the matter and found Mr. Puter was operated on last Friday for an abscess in the ear and will not be able to travel for a week or ten days. It may be we will have to include him among the witnesses whose testimony shall be taken by depositions.

We have the original records of the Land Office here in relation to these cases—sworn statements, proofs, etc. I wonder if we could just introduce them—have them admitted as original records to save time.

Mr. LIND.—What case?

Mr. McCOURT.—3320. **[170—2]**

Mr. UELAND.—As to that I will only call attention to this. There is no difference as to that part of the bill; as to who made the entries, the nature of the entries, the time of the entries, and so on. I would suggest that it is unnecessary to encumber the record with copies of them.

Mr. McCOURT.—We deem it necessary to introduce them for the purpose of showing the nature of the transaction and the connected steps in it; the association of the different people with this transaction; the dates of the filings and the fact that they were filed in groups together, showing their relation one to another; the relation of the witnesses to each other and to these several cases; showing the connected steps in the transaction.

COURT.—Very well.

Mr. McCOURT.—I will endeavor to put in the evidence I have in No. 3320 before proceeding on another one. The facts are different in the different cases and it will be difficult to try them together.

Mr. UELAND.—The defendants for whom we appear desire to enter an objection to the introduction of any testimony in this case and they introduced that objection separately on the ground that it appears in the case of the amended bill of complaint that suit is barred by the Act of March 3, 1891.

Objection overruled. Exception saved.

[Certain Offers in Evidence, etc.]

Mr. McCOURT.—I offer in evidence the application and affidavits of the entry of Douglas Adkison, for the SW. ¼ of section 24, T. 14 S. R. 3 E., bearing date the first day of February, 1900.

COURT.—Are you offering these by reference to the **[171—3]** townships, I mean offering in their order?

Mr. McCOURT.—All of the land included in the suit.

COURT.—I mean in the township.

Mr. McCOURT.—No. I was taking them up as they come, alphabetically. This is township 14 south, range 3 east. These papers include the timber and stone sworn statement—

Mr. LIND.—Is it your intention to offer the whole file?

Mr. McCOURT.—Yes, a whole file, and I will mention what papers are in them in the first ones and then I will say similar papers in the others, because there papers are practically identical. They include

Timber and Stone Sworn Statement, also affidavit showing excuse for continuance of proof from the 12th day of April until the 18th day, the non-mineral affidavit made at the time of proof, testimony of claimany and witness upon final proof, notice by the Register of publication, cross-examination of the claimant by a Special Agent, letter from the Commissioner of the General Land Office July 1st, 1902, proof of publication, final receipt for the payment of money, and final certificate.

Marked "U. S. Exhibit 1."

Mr. BANKS.—The defendants that I represent would like to have it understood by the District Attorney that the same objections and exceptions which apply to the defendants which the other attorneys represent shall be had by mine.

Mr. KELLY.—The same for my defendants.

[172—4]

Mr. TANNER.—I wish to enter an appearance for Mr. Kribs.

Mr. LIND.—No objection to the evidence.

Mr. McCOURT.—I also offer in connection with the Douglas Adkinson entry what is designated as "Report of fraudulent claim or entry" by Special Agent E. D. Stratford.

Mr. LIND.—I will ask the District Attorney whether that was taken—whether that document was prepared—whether the data which it contains was taken at the time of final proof or whether it was taken *ex parte,* afterwards, by some Special Agent of the government.

Mr. McCOURT.—Ordinarily it is taken *ex parte.*

I think the evidence will show in this case it was not. It may be said, however, to have been taken *ex parte.*

Mr. LIND.—The *ex parte* opinion of the Special Agent, would not be evidence of either fraud or good faith, not taken in pursuance of the statutory proceedings, like final proof at the Land Office.

COURT.—What do you claim for it?

Mr. McCOURT.—They are offered in connection with the entries and will be elucidated by facts later for the purpose of showing the continued effort upon the part of the entrymen and upon the parties charged as defendants, or most of them, of the original scheme to defraud the government out of its land.

COURT.—You expect to supplement it by additional testimony?

Mr. McCOURT.—Yes, showing the circumstances under which made, who furnished the facts which are contained in the **[173—5]** Affidavits and under what circumstances the agent was prevailed upon to present to the Government the facts contained, or purporting to be contained, in the affidavits.

Mr. LIND.—Will the Court grant me a moment? This is new to me and I want to look at it. All the defendants severally object to the admission in evidence of the documents offered for the reason that it is mere hearsay, and *ex parte,* not taken in any judicial or other proceedings sanctioned by statute to which we were a party so as to be bound by it—the alleged report.

COURT.—The objection will be overruled on the statement of the District Attorney that he will make it material by additional testimony, otherwise it will be stricken out.

Mr. McCOURT.—In addition to the reasons given, it is a part of the record upon which the patents in question were based.

COURT.—No statement of a Special Agent will be binding upon the parties unless bound otherwise.

Mr. McCOURT.—It contains affidavits of the patentee along with it.

Marked "U. S. Exhibit 2."

Mr. McCOURT.—We offer the papers in connection with the entry of Charles Barr for the southwest quarter of section 35, township 14 south, range 3 east, the original papers contained in his said entry, and containing documents similar to those in the Adkinson entry, his Timber and Stone Statement is dated January 31, 1900.

Marked "U. S. Exhibit 3."

Mr. McCOURT.—In connection with the entry of Charles **[174—6]** Barr we offer in evidence a similar report of fraudulent claim or entry to that in the Douglas Adkinson entry. I should state in connection with these reports of fraudulent claim or entry, as they are designated, that they contain affidavits by the claimant himself in each case, affidavit or purported affidavit of Frederick A. Kribs, and the affidavits of Horace G. McKinley, Dan W. Tarpley, and W. J. Drinkard.

COURT.—Are those people parties to this suit?

Mr. McCOURT.—Mr. Puter and Mr. Kribs are and Tarpley and McKinley will be connected with it by testimony. Also the affidavit of S. A. D. Puter in each case. The affidavits of all but the claimants in each case, with the exception of Ira Pilkington, being printed, the affidavits of Kribs and the others, except

the claimants, being identical in each claim or entry.

Mr. LIND.—Those are objected to for the same reasons as stated in objection to Exhibit 2.

COURT.—You may consider that objection as applying through the entire offer.

Marked "U. S. Exhibit 4."

Mr. McCOURT.—We offer the original entry papers in the entry of H. C. Barr, covering the southeast quarter of section 24, township 14 south, range 2 east, Timber and Stone Sworn Statement dated January 19, 1900. This record contains papers identical with, or practically identical with the entry papers heretofore offered.

Marked "U. S. Exhibit 5."

Mr. McCOURT.—I offer in evidence, *with* connection with the last entry the report of fraudulent claim or entry, **[175—7]** containing affidavits as indicated in the other cases.

Marked "U. S. Exhibit 6."

Mr. McCOURT.—I offer in evidence the original entry papers of Mrs. Luella Beeman, covering lot 4, and the south half of the southeast quarter of section 31, and the southwest quarter of the southwest quarter of section 32, township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900, this record containing similar papers to those heretofore introduced.

Marked "U. S. Exhibit 7."

Mr. McCOURT.—In this latter connection I offer in evidence report of fraudulent claim or entry as before indicated touching this claim.

Marked "U. S. Exhibit 8."

Mr. McCOURT.—I offer the original entry papers

in the entry of Henry B. Blakeley, covering lot 3, the north half of the southeast quarter of section 30, and the northwest quarter of the southwest quarter of section 29, township 14 south, range 4 east, his Timber and Stone Sworn Statement being dated February 26, 1900, and containing similar papers to those before mentioned.

Marked "U. S. Exhibit 9."

Mr. McCOURT.—I offer in evidence, in the latter connection, report of fraudulent claim or entry, containing affidavits as above indicated.

Marked "U. S. Exhibit 10."

Mr. McCOURT.—I offer in evidence the original entry papers of Hugh Blakeley, covering lot 4, the east half of the southeast quarter of section 30, and the southwest [176—8] quarter of the southwest quarter of section 29, township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900.

Marked "U. S. Exhibit 11."

Mr. McCOURT.—In connection with the last mentioned entry I offer the report of fraudulent claim or entry, being the same as those heretofore introduced, with the exception that there is no affidavit upon the part of the claimant contained in the report.

Marked "U. S. Exhibit 12."

Mr. LIND.—May I be permitted to ask the District Attorney at this time whether he intends to follow up this proof by putting in evidence all the filed of the General Land Office and the Interior Department relating to the investigation upon these entries and final decisions resulting in the issuance of patents?

Mr. McCOURT.—I think so. I do not intend to follow it just immediately following the offer of these, but before I close the case I will offer all of that record I have. There may be a few items I have not been able to secure.

Mr. LIND.—Might it not be well, if it is the purpose of the District Attorney to put in evidence all the papers in possession of the Government relative to these claims respectively, to put them in at this time, so that we may have an opportunity—some of these papers, for instance, the letter which I referred to the other day, we are familiar with, but most of these papers we have not seen, and if they were all offered and received in evidence at this time they will enable us to examine them and take such steps in connection with them as we deem advisable **[17?—9]** and we will save a great deal of time and it will have a distinct advantage, your Honor, of keeping each tract separate and distinct as we go along.

COURT.—I think it will be well to offer them all in order, if you can.

Mr. McCOURT.—I intend to facilitate the matter as much as possible, but, for instance, there are some few documents, if offered at this time, say a letter, without evidence supplementing it, will enable the counsel to raise some legal questiona and perpetrate an argument upon the Court here, which I want to postpone as much as possible.

Mr. LIND.—I assure counsel and the Court that we are a good ways from home and we do not want to consume time unnecessarily.

COURT.—Offer them as near in their order as you can.

Mr. McCOURT.—I will do that. I want to put the matter as fully before the Court as I can and get the position of the Land Department before the Court, so that counsel may take advantage of it, if they see fit, and they indicate by pleadings that they intend to. There is certainly no advantage in the Government trying to confuse this matter, for we have to make it plain or we cannot prevail. I will follow the suggestion of counsel as far as I can, so as to enable you to perfect your defense. When I get a little farther down the line I may have to ask you to produce some papers and letters, or, rather, have to ask you to see some that I have asked you to produce.

Mr. LIND.—Anything that we have is at your disposal. **[178—10]**

Mr. McCOURT.—We offer the original entry papers of Isaac R. Borum, covering the southwest quarter of section 14, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 26, 1900. This record contains substantially the same papers as in the former entry papers offered.

Marked "U. S. Exhibit 13."

Mr. McCOURT.—There is no report of fraudulent claim apparently, in regard to that case. There may have been one, but we have not been able to find it.

I now offer in evidence the original entry of Peter Buffington, covering the southeast quarter of section 14, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 26, 1900.

Marked "U. S. Exhibit 14."

Mr. McCOURT.—In connection with the latter

entry, I offer the report of fraudulent claim or entry, containing the affidavit of the claimant, the other affidavits being like the affidavits in the former reports offered.

Marked "U. S. Exhibit 15."

Mr. McCOURT.—I offer the original entry papers of Frank W. Burford, covering lot 2, the south half of the northeast quarter of section 31, and the southwest quarter of the northwest quarter of section 32, in township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900.

Marked "U. S. Exhibit 16."

Mr. UELAND.—Is that covered by your bill?

Mr. McCOURT.—Yes, I think it is. That entry and like ones are offered in connection with other entries to show the relationship—that is, to show similar transactions. **[179—11]** As a matter of fact, there were fifty-seven entries made under similar conditions, by these same parties. The Northern Pacific Railroad Company got into the field and filed a contest against them, and twenty-four of the claims were abandoned, or relinquished, rather, to the Northern Pacific, and these parties took the other thirty-three. They were all made under similar circumstances.

COURT.—You claim the same fraudulent transaction?

Mr. McCOURT.—Yes, connected with the same matter.

In connection with the last mentioned entry I offer the report of fraudulent claim or entry, which, however, does not contain any affidavit of the claimant,

the affidavits of the other parties mentiones being contained therein.

Marked "U. S. Exhibit 17."

Mr. McCOURT.—I now offer in evidence the entry of Charles Burley, covering the southeast quarter of section 35, township 14 south, of range 3 east, the Timber and Stone Sworn Statement being dated January 31. 1900. This record contains substantially the same entry papers as those heretofore offered.

Marked "U. S. Exhibit 18."

Mr. McCOURT.—In connection with the latter entry I offer the report of fraudulent claim or entry, containing the affidavit of the claimant, as well as of the other parties heretofore mentioned.

Marked "U. S. Exhibit 19."

Mr. McCOURT.—I offer in evidence the original entry papers of James B. Cooley, covering lot 3, the north half [180—12] of the southeast quarter of section 31, and the northwest quarter of the southwest quarter of section 32, township 14 south, of range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900, and the record containing the usual documents.

Marked "U. S. Exhibit 20."

Mr. McCOURT.—In connection with the entry of James B. Cooley I offer the report of fraudulent claim or entry, showing the affidavit of the claimant, as well as of the other parties heretofore mentioned.

Marked "U. S. Exhibit 21."

Mr. McCOURT.—We offer in evidence the original entry papers of Neal D. Dozier, covering the southwest quarter of section 34, township 14 south,

range 3 east, the Timber and Stone Sworn Statement being dated January 20, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 22."

Mr. McCOURT.—In connection with the entry of Neal D. Dozier we offer the report of fraudulent claim or entry, which does not contain the affidavit of claimant, but of the other parties heretofore mentioned.

Marked "U. S. Exhibit 23."

Mr. McCOURT.—I offer the original entry papers of Edward Finley, for the northeast quarter of section 35, township 14 south, range 3 east, the Timber and Stone Sworn Statement bearing date January 31, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 24."

Mr. McCOURT.—I offer in evidence the original entry papers of John L Green, covering the northwest quarter **[181—13]** of section 35, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 31, 1900, the record containing the usual papers, and in addition thereto a letter of July 22, 1904, to A. R. Greene from the Register of the Roseburg Land Office, and a letter of J. H. Fimple, Acting Commissioner, to A. R. Greene, Special Inspector of the Interior Department, dated August 14, 1904.

Mr. LIND.—Those two letters objected to for the reasons stated in objection to Exhibit No. 2.

Objection overruled, exception saved.

Mr. UELAND.—And they are subsequent to the patents, two years.

Mr. McCOURT.—They are not material. You can look at them. I do not care anything about them, but do not want to separate them from the record. They really have no bearing.

Mr. UELAND.—Make the offer except those two letters, so they are not included in the offer.

Mr. LIND.—They are utterly immaterial, your Honor.

COURT.—The record will be admitted, excepting those two letters.

Marked "U. S. Exhibit 25."

Two letters in question marked "Not in Evidence."

Mr. McCOURT.—In connection with the entry of John L. Green we offer the report of fraudulent claim or entry, including the affidavit of claimant. I notice an envelope addressed to John L. Green attached to the foregoing report. We do not offer that.

Marked "U. S. Exhibit 26." **[182—14]**

Mr. LIND.—Are there any private letters embraced in that?

Mr. McCOURT.—No, just the notice of issuance of patent.

We offer the original papers of John Harrison, covering lot 1, the north half of the northeast quarter of section 30, and the northwest quarter of the northwest quarter of section 29, township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900, the record containing the usual papers.

Marked "U. S. Exhibit 27."

Mr. McCOURT.—In connection with the entry of

John Harrison we offer the report of fraudulent claim or entry, containing the affidavits heretofore mentioned, together with that of claimant.

Marked "U. S. Exhibit 28."

Mr. McCOURT.—We offer the original entry papers of Elvira S. Jacobs, covering the northwest quarter of section 22, in township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 19, 1900, the record containing the usual papers.

Marked "U. S. Exhibit 29."

Mr. McCOURT.—In connection with the entry of Elvira Jacobs we offer report of fraudulent claim or entry, containing the usual affidavits, including that of the claimant, whose name, however, appears in this affidavit and purports to be Elaine S. Jacobs.

Mr. LIND.—Is it the same entry?

Mr. McCOURT.—Yes, the same entry.

Mr. LIND.—I would not call any attention to it.

Marked "U. S. Exhibit 30." **[183—15]**

Mr. McCOURT.—I offer in evidence the original entry papers of John J. Jaggy, covering the southeast quarter of section 34, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 20, 1900, the record containing the usual instruments.

Marked "U. S. Exhibit 31."

Mr. LIND.—John J. Jaggy is not a party to the bill. It appears that he is dead and his representatives have not been made parties. Would it not be proper and simpler to dismiss as against him? If not, we shall object to it on the ground that it appears in the proceedings that this party is dead and there

has been no legal representative.

COURT.—Is he a party to the bill?

Mr. LIND.—To the bill originally, was he not?

Mr. McCOURT.—In the original bill he was included as a party and it was discovered in the meantime that he was dead. When the amended bill was filed they left him out but included the land. The fact is established that it is not necessary to make the entryman parties. They have parted with their interests.

COURT.—The land is included in this controversy?

Mr. McCOURT.—The land is included in the suit, but the title had entirely passed out from Jaggy long before he died.

COURT.—He is not a party mentioned in the bill?

Mr. LIND.—With reference to this tract, it is objected on the part of the defendants, separately, that no suit can be maintained for a vacation of these patents unless the entryman or his legal representative be made a party **[184—16]** to the action.

Objection overruled, exception saved.

Mr. McCOURT.—We offer, in connection with the entry of John J. Jaggy, report of fraudulent claim or entry, containing the affidavit of the claimant, as well as of the other persons heretofore mentioned.

Marked "U. S. Exhibit 32."

Mr. McCOURT.—I offer in evidence the original entry papers of Benjamin F. Kirk, covering the northeast quarter of section 14, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 26, 1900, the usual instru-

ments being contained in the record.

Marked "U. S. Exhibit 33."

Mr. McCOURT.—In connection with the entry of Benjamin F. Kirk we offer the report of fraudulent claim or entry, containing the usual affidavits, including that of claimant.

Marked "U. S. Exhibit 34."

Mr. McCOURT.—I offer in evidence the original entry papers of Elam Miller, covering the northeast quarter of section 31, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 25, 1900, the usual documents being included in the record.

Marked "U. S. Exhibit 35."

Mr. McCOURT.—No fraudulent report is contained in the records nor is in the possession of the Government at the present time.

I offer in evidence the original entry papers of Mrs. Jennie Moulton, covering the east half of the west half of section 32, township 14 south, range 4 east, [185—17] the Timber and Stone Sworn Statement being dated February 26, 1900.

Marked "U. S. Exhibit 36."

Mr. McCOURT.—I offer in evidence the original entry papers of Jay S. Phillips, covering the northeast quarter of section 34, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 31, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 37."

Mr. McCOURT.—I offer in evidence the usual report, including the affidavit of claimant, in connec-

tion with the entry of Jay S. Phillips.

Marked "U. S. Exhibit 38."

Mr. McCOURT.—I offer in evidence the entry papers of Sadie E. Puter, covering the northeast quarter of section 20, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 19, 1900, and containing the usual documents.

Marked "U. S. Exhibit 39."

Mr. McCOURT.—I offer the report of fraudulent *clai,* or entry in connection with the Sadie E. Puter entry, which does not appear to include the affidavit of claimant, but does include the affidavit of S. A. D. Puter relative thereto, as well as the usual printed affidavits.

Marked "U. S. Exhibit 40."

Mr. McCOURT.—I offer in evidence the original entry papers of S. A. D. Puter, covering the northwest quarter of section 10, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated January 19, 1900, this record containing the usual papers, together with a large amount of cross-examination of Mr. Puter **[186—18]** which related to a contest or protest then pending against the entry of Mr. Puter, as well as all of the other entries connected with the case.

Mr. LIND.—We would ask your Honor that we may have opportunity to examine them during the noon recess to formulate such objections as we may wish.

COURT.—Very well.

Marked "U. S. Exhibit 41."

Mr. McCOURT.—We also offer, in connection with the S. A. D. Puter entry, the report of fraudulent claim or entry, showing the usual affidavits included with the claims above mentioned in relation to this specific claim, and generally with all the claims included.

Marked "U. S. Exhibit 42."

Mr. UELAND.—Let that stand like the other.

Mr. McCOURT.—I offer in evidence the original entry papers of Harry Saltmarsh covering the northwest quarter of section 24, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 1, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 43."

Mr. McCOURT.—I offer in evidence the report of fraudulent claim or entry upon the Harry Saltmarsh entry, which contains the affidavit of claimant himself, together with the other affidavits.

Marked "U. S. Exhibit 44."

Mr. McCOURT.—I offer in evidence the original entry papers of Zebulin Smith, covering the northwest quarter of section 34, township 14 south, range 3 east, which record contains the usual documents.

Marked "U. S. Exhibit 45." **[187—19]**

Mr. McCOURT.—I also offer the report of fraudulent claim or entry pertaining to the entry of Zebulin Smith, which contains the usual affidavits, including that of claimant.

Marked "U. S. Exhibit 46."

Mr. McCOURT.—I offer the original entry papers of Jacob W. Stillwell, covering lot 1, the north half

of the northeast quarter and the northwest quarter of the northwest quarter of section 32, township 14 south, range 4 east, the Timber and Stone Sworn Statement being dated February 26, 1900, the usual instruments being contained in the record.

Marked "U. S. Exhibit 47."

Mr. McCOURT.—In connection with the Stillwell entry I offer the report of fraudulent claim or entry, containing the affidavit of claimany, as well as the usual printed affidavits.

Marked "U. S. Exhibit 48."

Mr. McCOURT.—I offer in evidence the original papers in the entry of George L. Thompson, covering the northwest quarter of section 14, township 14 south, range 3 east, the Timber and Stone Sworn Statement being dated February 26, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 49."

Mr. McCOURT.—In connection with the entry of George L. Thompson we offer the report of fraudulent claim or entry, which contains the affidavit of claimant and the usual printed affidavits.

Marked "U. S. Exhibit 50."

Mr. McCOURT.—I offer the original entry of Thomas **[188—20]** Wilson, covering the northwest quarter of section 28, township 14 south, range 3 east, the Timber and Stone Sworn Statement bearing date January 22, 1900, the record containing the usual documents.

Marked "U. S. Exhibit 51."

Mr. McCOURT.—I offer the report of fraudulent claim or entry in connection with Thomas Wilson

entry, which contains the affidavit of Wilson, as well as the usual printed affidavits.

Marked "U. S. Exhibit 52."

Mr. McCOURT.—I now offer in evidence the original entry papers in the entry of Ira Pilkington.

Mr. LIND.—Is that entry embraced in this suit?

Mr. McCOURT.—Just a minute. I will make a statement of that. I don't seem to have the original papers here in the Ira Pilkington matter, covering the southeast quarter of section 26, township 14 south, range 3 east.

Mr. LIND.—What does it include?

Mr. McCOURT.—We have here report of fraudulent claim or entry covering that entry, which contains the complete report of the agent upon all of the entries, together with the original of these printed affidavits which we have heretofore put in evidence, and therefore we offer it to present the original record of these other affidavits that we have put in here, as well as to supplement it later by evidence in connection with this entry itself, and the affidavits themselves.

Mr. LIND.—Might this be left in the same condition as numbers 41 and 42, so that we can examine it during the noon recess? **[189—21]**

COURT.—Yes, I think that will be satisfactory.

Mr. LIND.—I will sugest, if the District Attorney will bear with me, whether it would not be better to offer at this time those matters pertaining to the entries in the suit, leaving that pertaining to the other matters not involved in this suit open to be offered in

connection with such other data. That will keep it distinct.

COURT.—If it can be done it will be better, I think, to offer the records in reference to the issues involved in this suit first.

Mr. McCOURT.—I think I will put all those in evidence now.

COURT.—Then, if you have any additional testimony that you desire to offer, and record testimony that you claim pertinent to this present inquiry, the objections can appear on the record in the regular order.

Mr. McCOURT.—These, I think, should appear right along.

COURT.—Offer it now, and let the counsel look at it at noon and formulate an objection.

Marked "U. S. Exhibit 53." **[190—22]**

[Testimony of Luella Ingersoll, for the Government.]

LUELLA INGERSOLL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

What is your name now?

A. Mrs. Luella Ingersoll.

Q. Where do you live, Mrs. Ingersoll?

A. 1212 Campbell Street, Portland.

Q. How long have you lived in Portland, Mrs. *Beeman?* A. Two years.

Q. Where did you live before you came to Port-

(Testimony of Luella Ingersoll.)

land? A. Albany, Oregon.

Q. Were you living in Albany, Oregon, in 1900?

A. Yes, sir.

Q. And how long did you continue to reside there after 1900? A. I—1902.

Q. You were married and keeping house there at that time? A. Yes, sir.

Q. Who was your husband?

A. Edson W. Beeman.

Q. You and Mr. Beeman have since been divorced? A. Yes, sir.

Q. And you recovered your maiden name—it was assigned you by the court? A. Yes, sir.

Q. Where is Mr. Beeman now?

A. At North Bend, Oregon.

Q. Did you at that time know S. A. D. Puter?

A. Yes, sir.

Q. Horace G. McKinley? A. Yes, sir.

[191—23]

Q. I refer to the year 1900. A. 1900.

Q. And prior to that?

A. No—well—no, 1900 is the first I met.

Q. And Dan W. Tarpley? A. Yes, sir.

Q. Did you know Frederick A. Kribs then?

A. Yes, sir—1901, I knew—

Q. Knew Mr. Kribs? A. Yes, sir.

Q. Didn't know him until 1901? A. No.

Q. Do you recall the incident of making a timber and stone entry early in 1900? A. Yes, sir.

Q. State to the Court the circumstances under which you took that claim—whom you made your

(Testimony of Luella Ingersoll.)

arrangements with?

Mr. LIND.—I think that is very leading.

COURT.—Let her state the circumstances under which she made it.

Mr. McCOURT.—I didn't think it very leading.

A. Shall I proceed?

Q. Yes.

A. Why, S. A. D. Puter met my husband and I and he made arrangements with my husband to procure—

Mr. LIND.—Now, your Honor—

COURT.—Just tell what you did, Mrs. Ingersoll. Nothing unless you were present.

A. I was present.

COURT.—All right.

A. I was present.

Mr. LIND.—Then let the witness state what was said and done.

A. Yes. He told my husband and I that he would give him $25 apiece for every man he would procure to file upon timber claims—or woman—every man or woman—and that he would [192—24] give them—he would furnish all expenses and give them $100 for their trouble, and would furnish the purchase money and all necessary expenses, and I took a claim under those conditions.

Q. Was any arrangement made as to what disposition was to be made of the land?

Mr. LIND.—Wait a moment. I object to that as leading and as calling for a conclusion of the witness.

COURT.—State what occurred and what was said

(Testimony of Luella Ingersoll.)

and done. I don't know as that was leading; it does not suggest an answer. She may state.

A. Why, yes. He took us to Roseburg—Mr. Puter didn't take us, Mr. McKinley took myself and another lady and several others, and I went before the officials there and they furnished me with the minutes of a claim and told me it was not necessary to see the land until afterwards; that they would show me on the land afterwards—I never went on the land in fact at all—and he would—he would show me the land afterwards. I went before Mr. Bridges and made filing.

Mr. LIND.—Mr. who?

A. Mr. Bridges at Roseburg and made filing on this land. I believe that was the man that took the testimony—took the affidavits—and then later on I went down there to prove up. I don't remember; I think it was something like 90 days or something of that sort—something of that kind. I went there to prove up and then Mr. Puter, he took me into a little room by ourselves and he told me to sign two papers, that they were mortgages. I never read them and he did not read them to me; and I signed them and he gave me $100. In this transaction I thought I should have more than $100 for my claim and to convince me that I *were* getting as much **[193—25]** and more than a great many, he unfolded a paper with a list of names showing, and the amount that each one got. The majority of them got $75, but a very few got $100, so I took $100 for my claim.

Q. In your trips to Roseburg who furnished or

(Testimony of Luella Ingersoll.)

paid the necessary traveling expenses—hotel expenses, if any?

A. Mr. Puter—S. A. D. Puter.

Q. You stated that Mr. Puter said that you would —or agreed with you to give you $100 for making the entry. What, if anything, was it understood he was to get out of the transaction?

A. Why, he was to get the land, of course.

Q. Did you or your husband pursuant to the arrangements which Mr. Puter made with you or your husband, secure any persons to make filings?

A. My husband secured three; I secured one.

Mr. LIND.—We object to that as hearsay—what her husband did.

COURT.—Unless she was present.

A. I was.

Q. Who was the entryman that you procured?

A. Mrs. Moulton.

Q. What is Mrs. Moulton's name at the present time?

A. Mrs. C. E. Lovejoy—Mrs. Jennie Lovejoy.

Q. Do you recall the persons that your husband secured?

A. Only one. I remember the name of one—of Peter Buffington.

Mr. LIND.—Wait a moment. I object to that as hearsay.

COURT.—I understood her to say she was present when the arrangements were made— **[194—26]**

A. I was—sure.

COURT.— —between her husband and this man.

(Testimony of Luella Ingersoll.)

Mr. LIND.—Is it one of the entries included in this suit?

COURT.—Yes—Peter Buffington. Her husband secured Peter Buffington.

Mr. McCOURT.—And Mrs. Moulton, too.

Q. What arrangement did you make with Mr. Peter Buffington there in behalf of these people?

A. Pardon me; I did not understand the question.

Q. I say, what arrangement did you make with Mrs. Moulton and your husband and yourself with Peter Buffington?

A. Why, he was to receive the same amount for his claim that we were—$100. $75, anyway—possible $100. That is the way it was.

Q. And what did Mr. Buffington agree to do for that?

A. To file upon a claim and turn it over to Mr. Puter or the people he represented.

Q. What was the arrangement with Mrs. Moulton, now Mrs. Lovejoy, made pursuant to your solicitation?

A. She went to Roseburg in company with myself, filed upon a claim at the same time, received $100 less her fare from Portland to Seattle, and turned her claim over the same as I did.

Q. And what was her arrangement with you? What arrangement did you make with her before she filed at all?

A. That she—I made arrangements with her that she was to file and receive $100 from Mr. Puter and she was to turn her claim over to these people. They were to furnish all expenses, all money that was nec-

(Testimony of Luella Ingersoll.)

essary, the purchase money, and she would get $100.

[195—27]

Q. Where was Mrs. Moulton living at the time you made those arrangements?

A. In Albany, Oregon.

Q. And in the meantime, when the proof was made in April or May, where was she living?

A. She was living in Seattle.

Q. Now then, did—were you present when Mrs. Moulton made proof upon her claim?

A. Yes, sir, I went with her.

Q. And after she had made proof, what was done and when?

A. They gave her $100 less her fare from—they was to give her—they promised to give her—told me they would—

Mr. LIND.—I object. "They" promised. Who promised?

A. They said they would.

Mr. LIND.—Who was "they," please?

A. Mr. Puter.

Mr. LIND.—Why don't you say Mr. Puter?

A. Well, he is representing—

Mr. LIND.—Well, I wanted to find out.

A. Well, pardon me, I will be more explicit.

Mr. LIND.—Mr. Puter?

A. Yes, S. A. D. Puter.

Mr. LIND.—What did he do?

A. He agreed to give her $100 for her claim.

Mr. LIND.—I want it definite.

A. Sure.

Mr. McCOURT.—If the Court please, I expect to

(Testimony of Luella Ingersoll.)

ask the Court—not with this witness, but with most of the witnesses to be called here—to indulge me with the greatest liberality in pulling from them the testimony which I **[196—28]** expect to show in this case. With this witness it is not necessary, but I expect to have to ask the Court for that privilege.

Q. Were you present when Mrs. Moulton was paid? A. Yes, sir.

Q. Who paid her? A. S. A. D. Puter.

Q. Where did he pay her?

A. It was in a little room in the same building where we did our filing.

Q. How far from the local Land Office?

A. I believe it was in that same building, if I remember rightly.

Q. And how soon was it that this payment was made after the proof was made?

A. Right there and then.

Q. Do you know whether or not Mrs. Moulton signed any instruments at the time she received that money?

A. I saw her sign some papers the same as I did. I don't know—

Q. How were those papers presented to yourself and Mrs. Moulton for signature?

A. They were folded and one was just overlapping the other a little like this. Mr. Puter told me to sign my name here and here.

Q. Who else was in the room at the time besides yourself and Mr. Puter?

A. Not anyone that I remember. I don't remember that there were anyone else in the room.

(Testimony of Luella Ingersoll.)

Q. At the time that—was Mrs. Moulton there?

A. Mrs. Moulton, myself—Mrs. Moulton, Mr. Puter and myself. **[197—29]**

Q. How was the payment made?

A. I can't remember whether—I believe it was in a check, but I am not positive,—no, I believe it was money. That is right; it was money, I remember.

Q. And do you recall whether or not you ever signed any other deeds or mortgages with relation to that land, except at that one time? A. No, no.

Q. You never did?

A. No, what I signed at all I signed on the same day.

Q. State whether or not yourself or Mrs. Moulton ever visited the land you filed on?

A. No, sir, never.

Q. Do you know where it is? A. No, sir.

Q. Now, prior to the time you went into the Land Office to make that proof, did you see anyone there? That is, did you see Mr. Puter or Mr. McKinley?

A. How is that question?

Q. Before you went in to make proof to give your testimony upon your entry—went into the Land Office? A. To make filing?

Q. No, to make proof.

A. The proof. I saw—I saw S. A. D. Puter, saw him on the train. He went on the same train from Albany to Roseburg with us. Saw him at the hotel.

Q. Did you have any conversation with Mr. Puter prior to going into the Land Office to make your proof, relative to what you would have to do there?

(Testimony of Luella Ingersoll.)

A. Yes, he told me that he would furnish all the expenses—

Q. I mean, as to what you would have—the nature of the proof, the nature of the testimony you would have to give? **[198—30]**

A. Oh, yes, he told me that I was just to sign what he told me to. I didn't understand—I couldn't understand—I didn't understand, and he said I was to just sign the papers he told me to and he would do the rest.

Q. Was he there while you were making the proof, yourself and Mrs. Moulton, in the Land Office?

A. In the Land Office, yes, sir. He stood just at one side. I believe, while we were making proof he was talking to a Mr. Booth. There was a Mr. Bridges and a Mr. Booth interested or connected there in the Land Office. He was talking to one of them while the other one was swearing us.

Q. Did you see McKinley there?

A. Not in connection with this. I saw him at the depot only the last time I was there.

Q. Was Mr. Frederick Kribs there?

A. Yes, sir, I saw him at the hotel.

Q. Did you see him at the Land Office?

A. No, not that I remember.

Q. Who made payment for your land?

A. I dont' know. Mr. Puter told me Mr. Kribs, but who did I don't know.

Q. Did you? A. No.

Q. Who did you transfer your land to?

A. I don't know.

Q. Do you know in whose favor that mortgage

(Testimony of Luella Ingersoll.)

was that you signed there, if you did sign one?

A. No, I don't know. They told me it was—I never read it. I couldn't tell you positive, but Mr. Puter said it was in favor of the gentleman that was furnishing the money—a Mr. Kribs and a Mr. Smith, I believe, he told me, that was furnishing the money for all the people who made filing.

Q. How many other persons were making proof there at the **[199—31]** same time that you were, and with whom Mr. Puter appeared to be connected?

Mr. LIND.—That is objected to.

COURT.—I think the Government has a right to show all that occurred there at the time in connection with the entries.

A. There was Mrs. Moulton, myself and I could not state the exact number, but there seemed to be—oh, I should imagine five or six. I am not—I could not speak positively, the exact number, but there was quite a number of people there to file that same day.

Q. At the time you made proof I refer to now.

A. Well, I mean—well, at the filing. They seemed to be the same people there the day we filed, and was there again at the time we made proof. I saw the same faces, but I don't know who they were.

Q. Was Mr. Puter there when you filed?

A. No, not when I filed.

Q. Who took care of you that time?

A. Mr. McKinley went with us that time.

Q. Where did he—where did he first meet you to go there. That is, where did you first find him attached to the transaction?

A. McKinley?

(Testimony of Luella Ingersoll.)

Q. Yes.

A. Well, my husband first brought him to me. I don't know where my husband met with him and talked with him—talked it over with him; and afterwards my husband and I were together in Albany and he met Mr. McKinley and introduced him to me. We were in a buggy and drew up to the sidewalk in Albany. That is the first time I remember of ever seeing Mr. McKinley.

Q. State whether or not payment was made to you for securing Mrs. Moulton. **[200—32]**

A. Yes, sir.

Q. Who made that payment to you?

A. My husband gave it to me, but I could not tell you whether Mr. Kribs or Mr.—I mean Mr. Puter or Mr. McKinley gave it to him. I could not tell you which, but my husband transferred it to me.

Q. Did you see—do you know whether or not any payment was made to your husband for the persons he secured?

A. I did not see it made to him, no.

Q. You don't know that yourself?

A. No, I don't know that myself.

Q. Now then, how long was it after you made proof before you heard anything further from this claim of yours? A. Oh, something like a year.

Q. State the circumstances under which you heard of it then.

A. Well, there had been a little rumor—I could not tell you just how I heard first—that there was a Government agent coming and we was all liable to have some trouble; and then one morning Mr. Mc-

(Testimony of Luella Ingersoll.)

Kinley came to my house and told me that the Government agent would soon be there—some time during the day—to interview me in regard to this claim. And I was quite exercised and frightened. He told me that I must not—no need to be frightened, he said, "Because he is our man." I said, "How do you mean?" "Why," he said, "we have him fixed. He is our man." And I—

Mr. UELAND.—Wait a moment.

Mr. LIND.—My associate suggests properly that this should be stricken out. There is no charge in the bill that McKinley was a conspirator. He is not a party to the bill and any statements made to him would be wholly hearsay so far as the alleged conspiracy was concerned. There is no allegation that he was a party to the conspiracy, nor is he [201—33] a party to this suit.

Mr. McCOURT.—This evidence will be followed by showing his connection with Mr. Puter and that they were one and the same.

Mr. LIND.—We object to this evidence on the ground that it is irrelevant and hearsay; that the McKinley referred to by the witness is not a party to this action nor alleged to be one of the conspirators, statements made to him are mere hearsay and for that reason should not be allowed in this case. I ask that the statement already made relating a portion of the conversation with McKinley, be stricken out.

COURT.—It will be admitted under the promise of the District Attorney to connect Mr. McKinley with this transaction as the representative and au-

(Testimony of Luella Ingersoll.)

thorized agent of Mr. Puter.

Mr. McCOURT.—And also of Kribs.

COURT.—Of the parties, whoever they may be. For that reason they will be admitted at this time.

Mr. LIND.—For the present there is an exception.

A. Well, he told me that I should not fear the Government agent. That—he says, "He is our man," and I said, "But he is a Government agent, they tell me." He says, "But you don't need to fear him. We have him fixed. His son is the typewriter."

COURT.—His son is what?

A. "His son is the typewriter in this case, and they will come here and simply take a statement, and I will come with them, and should they ask you who negotiated the deal, say Dan Tarpley." But I didn't see Dan Tarpley in the transaction prior to this at all; in fact after this not at all. And he **[202—34]** said "I will come with them, and I will sit where you can see me, and when you are to say 'Yes,' I will nod my head, and when you are to say 'No,' I will shake my head." They afterwards—he went away and in the course of an hour or two Mr. McKinley, Mr. Kribs and this Government agent—his name is something like Stafford or Stratton or something.

Q. Stratford.

A. Stratford, that is the name—and his son came to my house and they took my statement. He would ask questions and I would say, "Yes" or "No," as I had been instructed to say, and after the statement was all in, they brought me the statement to sign and I signed it, and Mr. McKinley and Stratford, his son

(Testimony of Luella Ingersoll.)

went to the carriage; Mr. Kribs started to go and returned and asked for a drink of water. I brought him a glass and pitcher with water. He drank a glass, returned the glass with a ten dollar gold piece in the glass, what for, I don't know, and turned and left me.

Whereupon proceedings adjourned until 2 P. M.

[203—35]

[Proceedings Had at] Portland, Oregon, April 19, 1910, 2 P. M.

Mr. LIND.—To the documents that were offered we make only the same objection that we made to U. S. Exhibit 2, with the additional objection that Mr. Pilkington's entry is not involved in this suit. Hence it has no—I don't suppose that the evidence is offered as substantive evidence in regard to the Pilkington claim. That is correct, is it not?

Mr. McCOURT.—It is offered merely as a similar transaction and so far as it is necessary to offer it to sustain the balance of the testimony along with the affidavits contained in the record.

Mr. LIND.—There is another matter to which I desire to call the attention of Court and counsel and that is this: Pilkington, McKinley, Puter and Kribs and Drinker made affidavits covering all the claims involved in the suit and some others. It appears that the General Land Office or the Government had those affidavits printed and inserted a printed copy of these affidavits in each separate record of proof offered in this case. Now the counsel for the Government suggested that the defendants had used printed affidavits, which is not warranted

by the facts, and I am sure that upon reflection he will withdraw that statement, and I ask the Court that these printed copies be eliminated from each separate record in the case, inasmuch as it simply encumbers unnecessarily the record. They are duplicated, as my associate suggests, twenty-eight times. I have examined these matters carefully during recess so that I know I speak accurately, and, if I may venture the suggestion, I feel confident that that printing was done by the Government printing-press in Washington. That I don't know, only that is my judgment.

Mr. McCOURT.—I don't know whether they were printed **[204—36]** by the defendants or not. I don't think I said they were. I said they were taken with the assistance and at the suggestion of the defendants in pursuance of the purposes of the original conspiracy. I don't see any reason for eliminating these printed records.

COURT.—Do I understand that the original affidavits connected with some of the separate reports were printed and copies attached—these printed affidavits attached to all the others?

Mr. LIND.—Yes, in each case and it is the elimination of these that we ask,—

COURT.—I don't see that they have any material bearing on the case, one way or the other.

Mr. LIND.— —for no other reason, your Honor, than that it encumbered the record unnecessarily, and if the District Attorney is not ready to finally dispose of that matter now, let him verify my statements.

Mr. McCOURT.—My information is—I don't

know how accurate it is—that the defendants had them printed themselves, but I am not prepared to say that definitely right now. However, it seems to me that they constitute the record in each particular entry as they stand, and there could be no purpose in eliminating them. They would be there just the same. We could not tear them out.

Mr. LIND.—There will have to be a record made out and printed.

COURT.—They might be just as well eliminated in printing.

Mr. LIND.—Except the original.

COURT.—It is not necessary to encumber the record.

Mr. McCOURT.—I may later on be able to show the defendants printed them themselves. **[205—37]**

[Testimony of Mrs. Luella Ingersoll, for Government (Resumed).]

Mrs. LUELLA INGERSOLL resumes the stand.

Direct Examination (Continued).

(Questions by Mr. McCOURT.)

What did Mr. Kribs say when he handed you the $10?

A. What is it?

Q. What did Mr. Kribs say when he handed you the $10? A. Not a word.

Q. What did you say? A. Not a word.

Q. How long did he stay after that?

A. Not an instant. Handed it to me and turned and went.

Q. Have you since that time seen that Stratford affidavit that was taken from you there?

(Testimony of Luella Ingersoll.)

A. What is that?

Q. (Read.)

A. The original?

Q. Yes, the original.

A. I saw the original in your office.

Q. Were you—state whether or not you were furnished with a copy of it at the time it was taken.

A. No, sir—at the time I gave my affidavit?

Q. Yes. A. No, sir.

Q. Have you since been? A. Yes, sir.

Q. When?

A. I couldn't state the date, but very recently.

Q. State to the Court how Mr. Kribs and Mr. McKinley and Mr. Stratford and his stenographer were situated with reference to you in the room at the time the affidavit was taken?

A. I sat the same as here. Mr. Kribs sat to my right; Mr. McKinley sat in that corner of the room—Mr. Stratford sat in front of me and the boy at the typewriter sat there on **[206—38]** my left.

Q. I call your attention to the affidavit which purports to have been made by you in U. S. Exhibit 8, or which is contained in U. S. Exhibit 8, and ask you if that was the affidavit which you made at that time, if you know.

A. This is my signature, but there are some things in that that I don't remember.

Q. What, for instance?

A. Well, it states there that I—I don't remember being asked the question where I said that Mr. Tarpley—I paid money to Mr. Tarpley. I didn't do that. I never paid—or Mr. Tarpley never paid me money.

(Testimony of Luella Ingersoll.)

I had no dealings with Mr. Tarpley in regard to that at all. Mr. McKinley told me to say, if I was asked who negotiated the deal, to say Mr. Tarpley, and then if I was puzzled as to say "yes" or "no," why, he would do that or that, and I said "yes" at that and "no" at that.

Q. That would be a shake of the head?

A. Yes, a nod of the head for "yes," and this way for "no," and I followed those instructions.

Q. Where was this affidavit taken?

A. This statement?

Q. Yes. A. In Albany, Oregon.

Q. You were living there at that time?

A. Yes, sir.

Q. Do you know where Mr. Kribs was living at that time? A. No.

Q. Or where Mr. McKinley was living?

A. No, I don't know where they were living.

Q. Did you ever know a man by the name of John A. Willd?

A. No, that is the man that—I remember the name, but I don't [207—39] know the man. I never saw the man. That is the man that Mr. McKinley told me to say I sold my claim to.

Q. The statement contained in the affidavit as to how much you received for the claim, did you know at that time?

A. How is that? I was told to say $850, but I only received $100, and that was from Mr. Puter. He gave me $100 at the—

Q. Who told you to say that?

A. Mr. McKinley told me to say that.

(Testimony of Luella Ingersoll.)

Q. Did Mr. McKinley give you any instructions as to what you should say regarding having a prior agreement?

A. Yes, he told me to say that I hadn't.

Q. You spoke of having received a copy of that affidavit lately. How lately with reference to the time trial was set in this case or subpoena issued?

A. I could not give the exact date, but it was—oh, it is within the month.

Q. Within a month? A. Yes.

Q. Did the—how was it delivered to you?

A. Why, it was sent to me.

Q. By mail? A. No.

Q. How?

A. Well, it was brought to my house.

Q. Did the party bringing it state who sent it to you?

Mr. LIND.—Wait a moment. Who was the party, it seems to me is the next important thing.

COURT.—Yes, I think she had better state who the party was.

Q. Do you know who the party was?

A. I don't want to say who the party was.

Q. Why? Did the party desire his identity concealed? A. Pardon?

Q. Did he desire his identity concealed? [208—40]

Mr. LIND.—I object to that, your Honor. It is immaterial what his desires were.

Mr. McCOURT.—I will show one of the defendants in this case sent the papers to her.

(Testimony of Luella Ingersoll.)

COURT.—Let her state who it was. Who the party was.

A. Must I do that?

COURT.—Yes.

A. Well, I don't want to.

COURT.—Well, that is a part of your duty.

A. If you could excuse me, please do. I don't want to. Is there no other way? I don't want to answer the question.

Q. You mean you don't want to give the name?

A. I don't want to give the name.

Q. Can you explain why you don't want to?

Mr. LIND.—We object to that. We want the whole truth in this matter.

Mr. McCOURT.—You want the name? Very well.

Q. What was the name?

A. Who wants it? Must I give?

COURT.—Yes, give the name.

A. Please don't. Ask him not to insist.

Q. They want the name before we can proceed further.

COURT.—You can answer the question.

A. Is there no other way?

COURT.—No other way.

Q. Before proceeding I will ask another question or two. How long had you known Dan W. Tarpley before Mr. McKinley asked you to use his name in that affidavit? If at all?

Mr. LIND.—Why not dispose of the pending question in the matter?

A. I met him about—oh, I should—about the

(Testimony of Luella Ingersoll.)

time they were locating as near as I can remember—about one year. He **[209—41]** was at Sweet Home, I believe, was the first time, as I remember. I am not positive.

Q. State whether or not Mr. Tarpley was the party who brought you the copy of this affidavit.

A. What is it?

Q. State whether or not Mr. Tarpley was the party who brought you copy of this affidavit.

Mr. LIND.—Wait a moment. That is not proper conduct on the part of the—

COURT.—Let her state who brought the affidavit. Let her state the name of the party who brought it to her. You may state the name of the party who brought the affidavit.

A. You compel me to?

COURT.—Yes, I do.

A. Mr. Tarpley.

Q. Dan W. Tarpley?

Mr. LIND.—What is the name?

Mr. McCOURT.—Dan W. Tarpley.

Q. For what purpose did he state that the affidavit had been given to you?

Mr. LIND.—That is objected to as leading and as assuming that he made a statement.

COURT.—Let her state what he said about it when he gave it to her.

A. To refresh my memory.

Q. Did he state who had sent it to you?

A. Mr. Kribs.

Mr. LIND.—Wait a moment; that is objected to.

COURT.—Let her state what he said when he gave

(Testimony of Luella Ingersoll.)
her the affidavit.

Mr. LIND.—Unless, of course, that is connected with **[210—42]** the defendants it will be stricken out.

COURT.—Oh, yes. The Government is now trying to prove the first step in this case.

Mr. LIND.—What was the last question and answer?

Question and answer read.

A. Mr. Kribs.

Cross-examination.

(Questions by Mr. LIND.)

What do I understand your present name to be?

A. Mrs. Ingersoll.

Q. Have you been married since you were divorced? A. No, sir.

Q. From Mr. Beeman? A. No, sir.

Q. That is your maiden name?

A. No, sir that was my name—

Q. I say, that was your maiden name?

A. No, it was not my maiden name. I was married before.

Q. And that was—

A. That was my former husband's name.

Q. Were you divorced from him?

A. Yes, sir.

Q. How long have you resided at Albany, in this State?

A. Oh, let me see. I don't remember how long I lived there.

Q. Well, approximately. I mean prior to 1900 how long had you lived there?

(Testimony of Luella Ingersoll.)

A. I think it was something like 1890 or 1891, something like that I went there. It was in the nineties, the early nineties.

Q. Did you go there as the wife of Ingersoll—

A. No.

Q. —or the second husband?

A. The second husband. **[211—43]**

Q. Where did you live prior to the time that you went to live in Albany? A. In Portland.

Q. And how long had you lived here?

A. Well, I say in Portland, but I have lived in Seattle and in Portland from the year 1888 back—part of the time in Seattle, part of the time in Portland.

Q. As Mrs. Beeman then?

A. No, as Mrs. Ingersoll.

Q. Oh, yes, where were you married to Mr. Beeman? A. I was never married to Mr. Beeman.

Q. Oh, when did you commence to cohabit with Mr. Beeman?

Mr. McCOURT.—I object to that as immaterial.

A. Now, listen to me. Let me tell you something. The courts of this town will exonerate me.

Mr. LIND.—I am not asking for anything of that kind.

A. No, but I know what you are trying. The courts of this town will exonerate me in this. I was supposed to be divorced from Mr. Ingersoll and was not divorced, but afterwards when I found that my life as a wife—as I supposed I was the wife of Mr. Beeman—

Q. I did not ask that nor insinuate anything

(Testimony of Luella Ingersoll.)

wrong about it.

A. You insinuated it. When I found I was not his legal wife the courts of this town—Multnomah courts—completed the divorce, and I never lived with Mr. Beeman afterwards—after I found I was not his wife.

Q. How long did you cohabit with him?

A. I was from—

Mr. McCOURT.—I object to that—

A. I believe it was—I can't tell you.

Mr. McCOURT.—Just a moment. **[212—44]**

Mr. LIND.—I will show good faith and show the materiality.

A. I will bring my divorce proceedings so you can see I am not the woman he is trying to picture me.

Mr. McCOURT.—That has nothing to do with the case and if you will keep still a moment we will cut it out.

Q. I ask you how long did you live with Mr. Beeman, and I repeat that.

A. It was 1890, I believe, was the commencement, and from that until—no—yes, 1890, until 1902—two or three.

Q. What was Mr. Beeman's business?

A. He was a railway conductor.

Q. During all the time that you resided with him?

A. Very nearly, with the exception of a few months.

Q. Was he a railroad conductor in 1900?

A. Well, I can't say whether he was employed or

(Testimony of Luella Ingersoll.)

not. He was part of the time out of employment, part of the time with employment.

Q. As a matter of fact, he was a land man, was he not? A. A what?

Q. He had a good deal to do with the location of claims?

A. He—when he was out of employment he started to survey out and locate some claims, but I believe Mr. McKinley usurped the claims and got in ahead of him. He never did no more. He never located very many—just two or three.

Q. In 1900—in February of 1900—

A. Well, I can't—

Q. —he was engaged in locating claims?

A. No.

Q. And surveying out claims, was he not?

A. Well, he surveyed a few and he procured—he procured three locators for Mr. Puter.

Q. Well, now, I didn't ask you for that at this time. I will **[213—45]** come to that later. He found claims for parties who sought claims and located all comers, did he not?

A. Well, I don't think he ever located any of his own accord. I don't think he did.

Q. Didn't you say a moment ago that he did until McKinley—

A. I say he did one. He located one that I know positively; a Mr.—

Q. I don't care about the name.

A. Well, all right.

Q. Now, you assisted him in that work, did you not? A. Part of the time.

(Testimony of Luella Ingersoll.)

Q. Yes. A. As much as I could.

Q. You went with him into the woods—into the timber, did you not? A. Well, no, no.

Q. Did you or did you not? A. I did not.

Q. Never at any time?

A. Only when we were hunting for Mr. Olsen,—a man that was dead—one of our friends, was the only time.

Q. When was that?

A. I can't tell you the exact date.

Q. Was it in the year 1900?

A. I could not tell you—would not be positive.

Q. Did you on that occasion go up to township 14, ranges 2, 3 and 4? A. No.

Q. You were never up there?

A. No, I don't know anything about them.

Q. Did you never state to Mr. McKinley that you had been through those ranges—been through that section of the **[214—46]** timbered country of Rock Creek?

A. No, most decidedly no. I never.

Q. Did you never don breeches—men's breeches—and go through the woods? A. Me?

Q. Yes, you. A. No, sir.

Q. Well, did you tell—did you or did you not state whether you had done so?

Mr. McCOURT.—Just a moment. I object because the time is not definitely fixed.

A. No.

Q. Well, I will make it more definite. To Mr. McKinley? A. No.

Q. In the month of February, 1900?

(Testimony of Luella Ingersoll.)

A. No.

Q. You did not? A. I did not.

Q. What was your business at Albany in the months of January and February, 1900?

A. I was a housewife. I nursed some. I—

Q. Did you keep boarders? A. No.

Q. Did you rent rooms? A. No.

Q When did you first meet Mr. S. D. Puter?

A. Well, I couldn't tell you positively, but it was—as to the date, but I was first introduced to Mr. Puter by my husband.

Q. When?

A. On the streets of Albany. I could not tell you the year. I could not tell you the month.

Q. On the streets?

A. Yes, we were in our buggy, and my husband already knew him and drew up to the curb and introduced me.

Q. When was that, approximately?

A. Well, it was—it was when he was making arrangements to [215—47] have Mr. Beeman—get locators for him.

Q. Well, when was that? You made your entry in February, on the 26th of February? A. Yes.

Q. Now, when was it with reference to the date of that entry?

A. It was very close to that time.

Q. Before or after? A. It was before.

Q. How long before?

A. Well, a short time. I could not tell you how long before.

Q. Haven't you any idea?

(Testimony of Luella Ingersoll.)

A. I could not tell as to the month or week; as to six months, I could not tell you, but it was within a year, I should imagine.

Q. You think it was within a year?

A. I think so.

Q. Was it within a month?

A. I could not tell you.

Q. Haven't any idea? A. I am not positive.

Q. Well, what is your best recollection? Was it three months, six months or nine months? You must have some idea.

A. I cannot tell. I told you I could not tell you. I could not tell you if it was one month, two months or three months, but it wasn't very many months before I went to Roseburg and filed on my claim.

Q. Did you meet Mr. Puter on the streets of Albany?

A. My husband called him to the edge of the sidewalk.

Q. Yes.

A. Yes, and introduced him to me. That is the first I ever recollect of seeing him.

Q. Was that the time that you had the discussion with him **[216—48]** about land entries?

A. Yes, he told my husband that he would give him $25 for every man he would procure for him.

Q. That was while you were sitting in the buggy?

A. Yes. I said, "If I get anyone will you do as well by me?" And he smiled and said "Yes."

Q. Your husband was engaged in the locating business himself, then?

A. No, not—he had given it up because they had

(Testimony of Luella Ingersoll.)

got in with a lot of other men and put them on claims. He lost those that he had surveyed out.

Q. Your husband was evidently acquainted with Mr. Puter, then?

A. Yes, he evidently was, or he would not have introduced him to me.

Q. Did you infer from what conversation you overheard between them that they had discussed these matters before?

A. I did. In fact, my husband told me they had.

Q. And did you ever—when did you next see Mr. Puter after that?

A. When I went to prove up.

Q. Where did you meet him then?

A. Well, the first I saw of him was on the train directly after we left the depot in Albany. He came through the train and stopped and sat down and talked to me in the car.

Q. Did you ride together all the way to Roseburg? A. Why, no.

Q. Who were on that train that you knew besides Mr. Puter? A. Mrs. Jennie Moulton.

Q. Who else? A. I don't remember.

Q. Was Mr. McKinley on the train?

A. I could not tell you—I am not positive. **[217—49]**

Q. You knew Mr. McKinley?

A. I knew him, but don't remember. I saw him in Roseburg, but don't remember seeing him on the train.

Q. How long had you known Mr. McKinley?

(Testimony of Luella Ingersoll.)

He lived right there at Albany, did he not?

A. I don't know a thing about where he lived.

Q. How long had you known him prior to that time?

A. Oh, I had known him—I saw him. He went with us when I went to do my filing.

Q. How is that?

A. He was the one that took Mrs. Lovejoy and I to Roseburg when I filed on this claim.

Q. Well, that is the trip I was speaking about. That is the time you met Mr. Puter, wasn't it?

A. No, I didn't meet Mr. Puter until I went to prove up. I told you so.

Q. Well, I didn't understand you.

A. Pardon me, I thought you did.

Q. So the only conversation that you had ever had with Mr. Puter prior to the time that you went to prove up, was the occasion when your husband called him or he called your husband when you were out buggy riding?

A. That is all—that is all I remember.

Q. Yes. Now, you stated you had made a bargain with Mr. Puter?

A. Well, as I told you, I said, "Would you give me the same?" And he said, "Yes."

Q. Give what?

A. Would he give me $25 for every one that I procured to file upon a claim.

Q. That was all the talk you had with him on that first occasion, was it? **[218—50]**

A. That was all—that was all, and he said "Yes."

(Testimony of Luella Ingersoll.)

Q. When did you make the bargain with him in regard to your own claim—the price you were to have for it, etc.?

A. It was when—when we went to file. Not when we went to file, but he had told us at the time—

Q. Now, when did you make the bargain with *him regard* to the price you were to have for your claim? A. When we were talking.

Q. Where? A. Where? In Albany.

Q. When?

A. He would give me—well, if you won't ask the questions so fast I will tell you. He would give us all $100, and he would,—for our claims. He would bear all expenses; he would furnish the purchase money and give us each $100, and for every one that I would—or that my husband would get—he would give us $25 apiece. Afterwards he only gave us $15.

Q. Give you each $25?

A. Give us $25 for every man that we would furnish him that was entitled to a timber filing.

Q. Yes.

A. And that would file and sign it over to him.

Q. And he would pay all your expenses?

A. He would pay all expenses. He would give us $100.

Q. Yes. You need not repeat that now. You stated it once. But did he give you any money at that time? A. When?

Q. When he made that arrangement?

A. Why, no.

Q. When did Puter first give you any money?

(Testimony of Luella Ingersoll.)

A. The first money he gave to me direct—

[219—51]

Q. No, no, direct or indirect. When did he first give you any money?

A. Well, it was after my husband went to him. He had procured—we had procured three men. We went to him for a settlement and he would only give us $15.

Q. When was that?

A. I can't give you the dates.

Q. Was it before or after you filed on your claim?

A. I can't tell you for sure.

Q. Well, what is your judgment?

A. Well, I have no judgment, because I am not positive. Whether he gave that—this money for procuring these people—before I filed or afterwards, but I am under the—well, I can't tell positively, so I won't state.

Q. Who paid your *far* down to Roseburg when you went down to file?

A. Transportation was furnished.

Q. By whom?

A. Why, I don't—Mr. McKinley—you better ask him. He is the one that passed us all.

Q. Did Mr. McKinley furnish you transportation when you went first to Roseburg to file?

A. The first time—certainly.

Q. Why didn't you say so?

A. He didn't give me the ticket. He didn't give me the money, but it was fixed on the train some way.

(Testimony of Luella Ingersoll.)

I don't know how. We simply went on the train and went.

Q. You talked with Mr. McKinley on that occasion? A. What is it?

Q. You talked with Mr. McKinley on the occasion of that trip, did you not?

A. I don't remember of any conversation direct, no. I may think of it, but I don't remember now.

[220—52]

Q. Didn't he state to you that he had advanced the money for that trip, and didn't he actually advance the money?

A. I didn't see any money.

Q. How? A. I didn't see anything, no.

Q. Advance the money for the trip—

A. He said our transportation was fixed. That was understood when we were talking that he—

Q. I am not asking about what was understood.

A. Well, what I understood when I was talking with Mr. Puter, that our expenses would be paid to Roseburg.

Q. But you hadn't talked to Mr. Puter since the time that you saw him at the buggy. Who did you get the information from with regard to the payment of your expenses to Roseburg?

A. I don't remember, but I believe it was Mr. McKinley, but I am not positive.

Q. You believe it was Mr. McKinley?

A. I believe, but I am not positive.

Q. Who advised you when to start, your husband or McKinley? A. Mr. McKinley.

(Testimony of Luella Ingersoll.)

Q. How long before you started did Mr. McKinley advise you that you should go to Roseburg on a certain day?

A. I could not tell you. I am not positive.

Q. The same week or the week before?

A. I could not tell you. I only know I was given to understand that I had to be there on a certain day.

Q. Given to understand by whom? Again, if you please, by Mr. McKinley?

A. I am not positive whether Mr. McKinley told me or my husband, but it was—that was the day I went and they were [221–53] there to meet me. They, in fact, went on the train. Mr. McKinley went on the train the same day I went; the same train Mrs. Lovejoy went and—

Q. Your husband too?

A. No, he didn't take any claim.

Q. He didn't go to Roseburg at all?

A. I don't think so. Not to my knowledge.

Q. Now, did Mr. McKinley have a conversation with your husband that you knew about or heard or oversaw—overheard or saw?

A. I don't remember just now.

Q. Did McKinley call at your house on several occasions before you went to Roseburg?

A. No, McKinley's first call at my house was when he came to post me what to say to the special agent. That was the first visit.

Q. Now, did your husband have an instrument for surveying out claims?

A. I could not tell you how he did it. He and

(Testimony of Luella Ingersoll.)

another man were working together.

Q. Did he turn over any claims to McKinley or give him the notes of any claims that he had looked up?

A. I don't think so. I think McKinley did not need them turned over. He looked them up himself.

Q. Well, did your husband say anything about that to you?

A. Well, he said McKinley had got in with some man and located on claims that he surveyed out.

Q. When was that?

A. That was just prior to him locating those other people.

Q. Was it prior to the time that you went to Roseburg to file? A. Yes. **[222—54]**

Q. How long prior?

A. Oh, not but a few months.

Q. Not but a few months?

A. Not but a few months.

Q. Well, may it not have been only a few days?

A. Possibly; I could not say, but I don't think it was a few days, because he was somewhat angry for losing his work in surveying out those claims and he told me he had some talk with him about it, and they told him that he could make more money—they would give him $25 for every one that he would bring to them that was entitled to a timber filing.

Q. What was your husband accustomed to charging for locating people?

A. Well, when he located them himself it was $75.

Q. That was the customary charge of locators for

(Testimony of Luella Ingersoll.)

locating persons on claims, was it not?

A. I could not tell you. That was what he charged for taking a man to a claim and showing him the minutes of the claim and locating him.

Q. Yes. Now, did those locators occasionally stop at your house? A. No, sir.

Q. They did not? When you went to Roseburg on this occasion with Mr. McKinley, you say you saw Puter on the train, did you?

A. No, not that occasion.

Q. Oh, that was later when you went to make final proof? A. Yes, sir.

Q. It was then you discussed the matter more fully with Puter, was it?

A. How do you mean? **[223—55]**

Q. The whole arrangement between you and Mr. Puter?

A. It was then that he paid me the $100. I tried to get more for my claim, but he told me that was as much as any one got, and the majority of them only got $75.

Q. Well, why did you try to get more?

A. Because I felt as though 160 acres of timber ought to be worth more than $100 to a woman or anyone, but he told me that was all it was worth at that time and that it would be years upon years before it would become valuable; and I was a poor woman and a hundred dollars was a lot of money to me.

Q. Yes.

A. He said it was no expense to me whatever.

(Testimony of Luella Ingersoll.)

Q. Well, you had made a bargain before, had you not? A. Yes.

Q. Well, why did you try to get more at that time?

A. The same as you would or anybody else—self interest, natural.

Q. In the Land Office who were present at the time you made your final proof?

A. Mrs. Lovejoy—or Mrs Moulton—Mr. Bridges, Mr. S. A. D. Puter and Mr. Booth. I don't remember. There were others but I don't remember who they were.

Q. Bridges was the Register, was he?

A. I believe so.

Q. And Booth was the Receiver?

A. I believe so.

Q. Who took your proof?

A. I believe it was Mr. Booth. I am not positive, but as I remember, it was Mr. Booth,

Q. Did you get your final receipt right there and then? **[224—56]**

A. I don't know what it was. I didn't get anything, only $100.

Q. Where did you get the $100?

A. Mr. Puter gave it to me.

Q. In an office of the Land Office building?

A. No, it was in a little room. He took me in another little room.

Q. In the same building?

A. I—I am not just perfectly clear on that, but I—

(Testimony of Luella Ingersoll.)

Q. But near by?

A. Well, it was either in that building, but I can't tell you positively, but it was in a little room. I don't know whether it was in that building or over at the hotel. I can't tell you for my life, sure.

Q. How soon after that was it—after you made final proof?

A. Right there and then that same date.

Q. Shortly after you made final proof, was it? Was it after or before you made proof?

A. I don't know what you mean by making proof.

Q. The papers that you submitted to the Register and Receiver—that Mr. Booth took.

A. No, he took me in a room and he had me sign two papers. I don't know what they were for my life. He told me they were mortgages, and I signed two. There were one overlapped one over the other, and I signed my name here and here where he directed. And he gave me the $100 and then I went back in another room and then Mr. Booth did something—I don't know what it was. They said it was my final proof. I don't know what it was.

Q. Now, did you sign your name to one or two papers on that— **[225—57]**

A. To two papers; that is, I signed my name twice. I don't know whether to two papers, or one folded up, for I could not tell you. They were overlapped like that.

Q. Are you sure that you signed your name only once—only twice?

A. That is all I remember.

(Testimony of Luella Ingersoll.)

Q. I wish to call your attention to "Defense Exhibit 'A' for Identification." Is that your signature? A. There?

Q. Yes.

A. It don't look like it. No, sir. I never wrote that to my knowledge. I don't think so. That doesn't look like—that is too smooth for me. Compare it with that statement.

Q. Well, now, then—this paper inquired in regard to is the note attached to "Exhibit 'A' for Identification."

A. I don't believe I did. I don't think that is mine. That isn't the way I make my—no. I don't think it. It don't look like it. Compare it with the other. There is the character all through it all.

Q. Wait a moment. I turn the paper over and ask you whether that is your signature?

A. Yes. That is my—

Q. On the mortgage?

A. That is my signature.

Q. Is that your husband's signature?

A. It looks like it. I can't be positive of it, but I believe so. I don't know; I couldn't swear for him.

Q. Is that your husband's signature on the note—your then husband?

A. I don't know. Now, that is mean of you to talk to me—

Q. No, I said— **[226—58]**

A. Well, that is all right. No, I don't think so. It don't look like it.

Q. I didn't mean to. You must pardon me. I

(Testimony of Luella Ingersoll.)
want to know whether Mr. Beeman—

A. Sure. I don't know whether that is Mr. Beeman's or not. I could not tell you. I don't recognize that as mine.

Q. Was Mrs. Moulton, now Mrs. Lovejoy—was she present in the room at that time when you signed this paper?

A. Yes, I am under the impression she was. I am quite sure, because we weren't separated.

Q. Did she sign this paper as a witness? What is your recollection in regard to that?

A. I don't remember.

Q. Do you recall of her ever signing a paper as a witness that you executed in connection with this matter?

A. No, I don't recall anything of the kind.

Q. Do you know Mr. Crawford?

A. Crawford?

Q. Crawford—A. M. Crawford.

A. I can't place him and his name is familiar. I can't place him.

Q. Was he present when you executed this paper?

A. I cannot remember. I don't—I don't remember of anybody being present—no.

Q. Did you sign any more papers on that day than those two, the note and the mortgage, assuming that you signed the note?

A. I don't remember that I did. I don't remember of signing anything, only two, as he gave it to me folded in this way.

Q. How much money did you get there that day?

(Testimony of Luella Ingersoll.)

A. $100. **[227—59]**

Q. Now, let me refresh your memory by a suggestion. As a matter of fact, didn't you get $75 there that day and $25 later in Albany?

A. No, no, not as I remember it.

Q. Well, are you sure that your memory is accurate?

A. The same as you would be when you think you remember a thing—as I remember it.

Q. If it should appear by other testimony that $25 was paid you later in Albany—

A. No, no.

Q. —making $100 in all, would you say—what would you say then?

A. Well, I don't remember anything of that sort. As I remember it, I was paid $100 there that day in greenbacks.

Q. When did you first see Mr. Kribs, the defendant in this case?

A. At the hotel in Roseburg. I believe it was the time—I can't remember whether it was the time that I proved up or made my filing, but I am under the impression that it was the time that I proved up.

Q. And that was the time that Mr. Puter told you that Mr. Kribs would furnish the money for this claim? A. What is it?

Q. Was that the time that Mr. Puter told you that Mr. Kribs would furnish the money for this claim? A. I don't remember.

Q. You testified a while ago that Mr. Puter told you that Mr. Kribs would furnish the money for this

(Testimony of Luella Ingersoll.)

claim and take a mortgage or mortgages?

A. Kribs and Smith. I didn't—it must—well, I am not positive whether it was that time, but I believe it was **[228—60]** when—I believe it was when I proved up. I am not positive, but as I remember it.

Q. Had you ever heard of Kribs prior to that time? A. Of who?

Q. Of Kribs until Puter told you about him on that occasion?

A. I can't remember; I am not positive. I understood they were—and I can't tell you how I understood it—I can't tell you who told me—but there were men in Minnesota—there was a man in Minnesota—capitalists—I don't remember how. I can't give you an accurate account of that.

Q. That would furnish the money for making this final proof?

A. Yes, yes. They were the ones that was eventually buying the claims.

Q. Now, who gave you that information?

A. Well, I just told you I can't remember. I don't remember whether my husband told me or—I don't remember. I can't tell you positive whether it was told to him and he told me.

Q. Your best recollection is that you never heard—you never saw Kribs until the occasion when you went to Roseburg to make final proof and when this mortgage was given?

A. That is the first time that I remember of seeing Mr. Kribs—was at Roseburg when I—as I re-

(Testimony of Luella Ingersoll.)

member it, it was there when I filed or when I proved up, and I can't tell you positively, but believe it was when I proved up. I am not positive.

Q. How did you happen to notice him? You saw him—was he called to your attention? Did you meet him?

A. Well, he was in the—he came out of a room off the parlor at the hotel. That is the first, and Mr. Puter said—we sat out around the railing of the hotel—we sat there and was talking and he pointed out Mr. Kribs and another **[229—61]** gentleman. I don't think he told me who the other gentleman was. He says, "There is one of our men."

Q. Well, now, I ask you again: Mr. Puter having pointed him out, it must have been at the time that you made the final proof, because Mr. Puter was not there when you made your filing?

A. It must have been. That is what I told you. I was under the impression that was the time.

Q. Now, did he say anything to you—did Mr. Puter at that time say anything to you about having other men in view who might buy claims?

A. No.

Q. In the East? A. No.

Q. Did he speak of Mr. Kribs as the buyer or as loaning money, or what?

A. He said that—well, he pointed Mr. Kribs out as one of the men that furnished the money, and he had at the time—the man he pointed out as Mr. Kribs had a valise, and I laughed and said, "Is that what he carries his money in?" He laughed and

(Testimony of Luella Ingersoll.)

said, "I guess so." Just a little joke that passed as he pointed him out.

Q. That is all you knew about Mr. Kribs' connection with it, what you heard in that joking conversation? A. Oh, no.

Q. Well, when did you hear anything more?

A. Why, I couldn't tell you when, but we each knew that those—it was—I don't know. We all understood that those men in the East was to buy our claims.

Q. What men in the East?

A. Why, Mr. Smith. I don't know what Mr. Smith it was. He was associated some way, Mr. Puter said, with Mr. Kribs. **[230—62]**

Q. Where did Mr. Kribs live?

A. I don't know. I didn't ask him.

Q. Well, now, Puter said at this time that Smith was associated with Mr. Kribs, did he?

A. Sure.

Q. What did he say? Just give his—

A. Well, that is what he said. That Mr. Smith and Mr. Kribs—"There is one of our men," and he pointed out this one man and said that one man was—

Q. Did he point out Mr. Smith to you?

A. No, no, no.

Q. Did you ever sign any papers after that day to Mr. Puter? A. Did I ever do what?

Q. Did you ever sign any papers before Mr. Puter after that day?

A. No, not that I remember.

Q. Did he ever tell you that you signed a deed?

(Testimony of Luella Ingersoll.)

A. That I what?

Q. That you signed a deed for the land?

A. No, I never talked to him about it. All I did, I just signed the two papers there, the one time. I never talked to him. Whether I signed a deed or what I signed.

Q. Let me ask you again: Did Mr. Puter ever tell you that you had or that he desired you to sign a deed for this land? A. Why, no.

Q. Did you intend to sign a deed for that land?

A. Why, no. All I was looking for was my $100 and they took care of the rest of it.

Q. Well, I know. Did you yourself intend to sign a deed for that land at that time? [231—63]

A. This is the way I understood it.

Q. Now, please, kindly answer my question. Yes or no. Did you at that time intend to sign a deed for this land—to sell the land?

A. Well, I can't answer it without you let me answer it my own way; as he gave me to understand it—

Q. Well, did you intend to sell this land at that time?

A. Why, sure. I was getting it for another person that was paying me $100.

Q. For what other person were you getting it?

A. For Mr. Puter. He told me he was acting as agent for these capitalists, and he said, "You simply mortgage this and you don't appear when the mortgage is due—why, we foreclose."

Q. And you lose your land? A. What?

(Testimony of Luella Ingersoll.)

Q. And you lose your land?

A. Why, that is the way he had of covering it up.

Q. Yes. A. Sure.

Q. That is what I thought.

A. I was to take it for them, and they was to give me $100. They furnish the money and took a mortgage. He told me this was a mortgage and a copy. I don't know what the copy was.

Q. When did you first hear about Mr. Willd?

A. When Mr. McKinley told me to say I sold it to Mr. Willd.

Q. When was that?

A. That was the day the Government agent came to interview me. I don't remember the date.

Q. About when?

A. Couldn't tell you. It was some time in 1901, but I can't tell you the month or—

Q. Was it before or after you moved to Portland?

[232—64]

A. It was before I moved to Portland. I was still in Albany.

Q. Was Mr. Beeman there with you at that time?

A. No, I was alone in the house.

Q. Was anyone there besides yourself in the house?

A. Just myself when Mr. McKinley came to me, and about two hours after, the special agent came.

Q. And who else came besides the special agent?

A. Mr. Kribs, the special agent's son, and Mr. Horace McKinley.

Q. Was the—how old a man was the son?

(Testimony of Luella Ingersoll.)

A. Oh, I could not tell you.

Q. Oh, approximately?

A. Well, I can't guess on anyone's age. I don't know.

Q. Was he a grown man or a youth?

A. I could not tell you. He didn't look very old. He looked young. A young man. I don't know. A young man, beardless. I couldn't begin to tell you how old he was.

Q. Did he carry a typewriter with him?

A. Yes, sir.

Q. And are you sure Mr. Knibs was there?

A. Yes, sir, Mr. Knibs was there and sat at my right.

Q. Are you as positive about that as you are of other statements that you have made?

A. Why, sure I am. That is the time he gave me $10 when he came back and asked for a glass of water.

Q. Now, haven't you stated here before that that was $20? A. No, sir.

Mr. McCOURT.—I object to the counsel trying to fix what the witness said.

Q. I didn't mean on the stand, but before you went on the stand.

A. What would I state it for?

Q. Well, I asked the question. **[233—65]**

Mr. McCOURT.—I ask counsel to describe the time and place and the persons present when he asks any such question.

Mr. LIND.—If I ask it for the purpose of impeachment I would have to.

(Testimony of Luella Ingersoll.)

COURT.—I think he can ask a witness on the stand on cross-examination whether or not she made a statement.

A. No.

Mr. McCOURT.—I think, if the Court please, that the rule is that in this sort of questions where it is attempted to show a contradictory statement, it is in the nature of an impeachment.

Mr. LIND.—How did I know but what the witness would admit it?

COURT.—I do not so understand the rule.

Mr. McCOURT.—I don't think it is very material.

A. Well, I never said $20. It was $10 and Mr. Kribs knows himself. Ask him.

Mr LIND.—I ask to have that stricken out. It has no place in the record.

Mr. McCOURT.—I object to having it stricken out.

COURT.—I don't think that is a matter of testimony. I will strike it out.

Q. So far as you know, you never signed any deed to Willd, did you? A. What is it?

Q. So far as you know you never executed any deed to Mr. Willd, did you?

A. No, not as I know of. I may have signed a deed. That may have been a deed, but I didn't read it. I was told it was a mortgage and copy. That is what Mr. Puter told me. **[234—66]**

Q. Did you ever sign a paper at a time when Mrs. Moulton was present and signed it as a witness?

A. I don't remember; I may have. I don't know.

(Testimony of Luella Ingersoll.)

I may have. I don't know.

Q. Didn't you, as a matter of fact, sign a paper in Albany on the 19th of May, after you had returned from Roseburg, at which time Mrs. Moulton was present and signed that paper as a witness?

A. I don't remember of doing anything like that.

Mr. LIND.—I will ask that this paper be marked for identification.

Paper marked "Defense Exhibit 'B' for Identification."

Q. I ask you to look at papers marked "Defense Exhibit 'B' for Identification," and say whether that is your signature appended to it?

A. That looks like it.

Q. Is that your husband's signature?

A. It looks like it. I don't remember.

Q. I mean Mr. Beeman's?

A. It looks like it. I don't remember. It looks like my signature. Marie Ware might have had hold of it; I don't know.

Q. Does that look like Mrs. Moulton's signature?

A. Well, I am not sufficiently familiar with her signature. It may be—may not. I could not tell you, but I am not—

Q. Mrs. Jennie E. Moulton?

A. Yes, I know. I saw that, but I don't know; I couldn't tell you, but that looks like mine; but I don't remember signing it.

Q. Well, will you swear that you didn't sign that paper at Albany that I showed you last?

A. I told you that it looked like my signature, but

(Testimony of Luella Ingersoll.)

I am [235—67] not sure that I signed it. I don't remember it.

Q. Now, who was Mr. Tarpley? This man you referred to—Dan Tarpley—Dan W. Tarpley?

A. I don't know who he is. He is the gentleman that sits over there.

Q. Yes.

A. Did a minute ago. I don't see him now.

Q. Is he a friend of yours?

A. Not personally, no.

Q. Is he an acquaintance of yours?

A. Yes, I know him by sight.

Q. How long have you known him?

A. Oh, I believe—I can't tell you the first time I met him, but I believe it was at Sweet Home one time; but I can't tell the year.

Q. Where it Sweet Home?

A. That is east of Albany.

Q. Is it near the location of these lands?

A. I could not tell you. I never was on the land. I don't know anything about it.

Q. You met him at Sweet Home before you made this claim at Roseburg?

A. I am not sure whether before or after. I could not tell you.

Q. What were you doing at Sweet Home?

A. Looking for—helping to look for a man that was lost in the mountains, which we afterwards found dead—a Mr. Olsen.

Q. You at that time traveled through the timber a good deal?

(Testimony of Luella Ingersoll.)

A. Only looking for Mr. Olsen. I just—

Q. I know. Looking for Mr. Olsen, but nevertheless looking **[236—68]** for him, it took you through this timber?

A. No, not as I understand. No, it was just in close proximity to Sweet Home. I went on the little trails through, looking in the hunters' cabins with my husband, to see if we could find the man, dead or alive.

Q. Yes, and how long was that before you went to Roseburg, if you remember?

A. I don't remember whether it was before or afterwards.

Q. Do you deny that you stated to Mr. McKinley when you went down to file, on the day before you went down to file on this claim, that you were familiar with that section up there, that you had been up there with your husband? A. Do I deny it?

Q. Yes.

A. Most emphatically. I didn't need to make any such statement, because he told me I could be shown on the timber after I had made filing.

Q. He told you you could be shown the timber after you made the filing? A. Yes.

Q. So you did have a talk with him about that subject matter, did you, before you went to Roseburg?

A. I believe it was on the train that I—now, I am not positive if it was on the train or where, but I do remember saying "Isn't it necessary that we should go on the timber—on the land first?" He said no, he could show me that any time.

(Testimony of Luella Ingersoll.)

Q. Now, how often have you seen Mr. Dan Tarpley since that time when you met him up at Sweet Home? A. I could not tell you.

Q. You have seen him frequently, have you not?

[237—69]

A. Not very frequently, no.

Q. After you left Albany to live here in Portland, did you see him at your house? You kept a hotel here in Portland, did you not?

A. I kept a rooming-house, called the Plaza Hotel, yes.

Q. A rooming-house called the Plaza Hotel?

A. Yes, roomers, certainly.

Q. During what period did you keep that rooming-house?

A. Between—I believe I bought *in* in 1903, and sold about 1905.

Q. During that time did you meet Mr. Tarpley?

A. I don't remember—no.

Q. Is he living in Portland now?

A. I could not tell you where he is living.

Q. How did you come to see him some two or three weeks ago on the occasion you referred to?

A. He came to my house.

Q. Had you asked him to come?

A. Why, no.

Q. How is that? A. No.

Q. Why did you hesitate so about telling the Court about his coming to your house?

A. Will you ask him, if you please? Shall I tell him?

Mr. McCOURT.—You answer it yourself.

(Testimony of Luella Ingersoll.)

Q. Well, you answer it.

A. What was the question?

Q. Did you answer my question?

A. No, I asked what the question was.

Q. (Read.)

A. I promised him I would not tell.

Q. That was it, was it? That was your sole reason, was it? **[238—70]** A. My sole reason.

Mr. LIND.—I would like, your Honor, to reserve the right to cross-examine this witness again, if I so desire, and we will let the District Attorney know seasonably—she will remain here for some time, will she not?

Mr. McCOURT.—I would like to have the cross-examination concluded upon this matter.

Mr. LIND.—I will say to the Court frankly any matter upon which I have wholly or partially examined the witness at this time I shall not resume again, but there are matters—proper cross-examination—that I would like to have the privilege of asking her again, not for the purpose of completing anything I have attempted here.

Mr. McCOURT.—No objection.

COURT.—Very well.

Redirect Examination.

Q. Do you remember whether Mrs. Moulton came back to Albany or went on to Seattle after proof was made down there?

Mr. LIND.—Who?

Q. Mrs. Moulton or Miss Moulton—whatever her name was?

A. Well, she was compelled to pass through Al-

(Testimony of Luella Ingersoll.)
bany, but I don't remember whether she stopped off there or not.

Q. Was your husband at Roseburg?

A. No.

Q. Do you recall whether or not those mortgages or deeds which you signed at Roseburg were submitted to your husband for his signature?

A. I don't remember it.

Q. When did you next see Mr. Puter after you saw him at Roseburg?

A. I don't—I don't remember how soon it was. It was when he settled with my husband for the—I can't state positive— **[239—71]** I am not clear; I can't tell you.

Q. At the time that you recall of next seeing him, was Miss Moulton in Albany?

A. No, I can't remember.

Q. Do you know a man by the name of John Hamlin?

A. No, sir; no. I don't remember that I ever knew.

Q. You were asked a while ago as to a man by the name of A. M. Crawford, whose name appeared upon an instrument submitted to you there.

A. I don't remember him, although the name is familiar; but I can't tell where I heard the name or in connection with what.

Q. Do you know the Attorney General of this State—A. M. Crawford?

A. No, not personally.

Q. You don't know whether he was there about the Land Office on the day you made proof?

(Testimony of Luella Ingersoll.)

A. I do not.

Q. Some question was asked you in reference to Mr. Kribs as to whether or not you secured an introduction to him at that time, there at Roseburg?

A. I don't remember of being asked that question.

Q. I say, did you?

A. I believe Mr. Puter introduced me to him as he passed out. As I remember it, yes.

Q. Now, Peter Buffington—

Mr. McCOURT.—This is a question I should have asked on direct examination.

Mr. LIND.—That is all right. We may want to do the same thing.

Q. Did Mr. Buffington go to Roseburg at the time you went **[240—72]** to file?

A. I could not tell you when he went. I saw him on the street there.

Q. Where?

A. In Roseburg. I don't know when he went. Don't know whether he went the same train I did or not. I saw him in Roseburg.

Q. How many times? A. Twice.

Q. Where did he live at that time?

A. I could not tell you; I don't know. He was a man—one of the men my husband procured for him.

Q. Were you present when your husband had the conversation and made the arrangements with him?

A. No, no.

Mr. LIND.—Then I ask your Honor that that evidence be stricken out. It is manifestly unfair. I move to strike it out.

(Testimony of Luella Ingersoll.)

Mr. McCOURT.—I asked her if she was present when her husband made the arrangement.

Mr. UELAND.—And she said no.

Mr. McCOURT.—She said no and that ends it.

Mr. LIND.—The whole thing in relation to this man Buffington should be stricken out as mere hearsay. I move to strike it out as mere hearsay and irrelevant in this case.

COURT.—I think the motion will be sustained.

Q. Did you talk to Mr. Buffington yourself about the matter?

A. No. All I know Mr. Beeman—all I know he told me that he procured him.

Q. Did you ever have any conversation with Mr. Buffington himself in relation to the matter?

A. No, no, sir; not that I remember. **[241—73]**

Mr. McCOURT.—We offer in evidence copies of deed and mortgage which appear to be on record in Linn County, conveying this land from Luella Beeman to Willd and mortgaging from Luella Beeman to Kribs.

Mr. UELAND.—May it please your Honor, we object as immaterial, because there is no issue raised by the answer as to the mortgage or conveyance. We don't think the record should be encumbered by the documents. We have the original documents here, which the District Attorney could have if it was material to have them in the record, but we don't see how it can be material. It has no tendency to prove any charge in the bill.

Mr. McCOURT.—I think they are admissible merely for the purpose of showing the transaction—

(Testimony of Luella Ingersoll.)

that the mortgage was made in connection with the testimony of the witness showing that the mortgage was made immediately following the original agreement; made at the same time and bearing date a few days later.

Mr. UELAND.—The averments of the bill are admitted in the answer.

Mr. McCOURT.—Did you admit it in your answer? I don't recall that you admitted that they were made immediately upon the proof and that the deeds were made immediately, but you admitted the fact that they were made, as I recall it.

Mr. UELAND.—We will find the bill.

Mr. LIND.—These two documents have been referred to in cross-examination, and I think it will be all right to put them in, and we will substitute the originals in place of the certified copies that you have.

Mr. McCOURT.—I don't want him to substitute those originals. The fact of the matter is, while I am introducing **[242—74]** them in this case, the testimony as it now stands, shows Mr. Beeman never signed these instruments himself at all. Now, if the Court please, I would not object to that upon its failure to transfer title or apparent title, but as an item in the evidence going to show the matter of the conspiracy.

Mr. LIND.—Do you prefer to introduce the copies?

Mr. McCOURT.—Yes, the certified copies.

Mr. LIND.—Then we insist upon our objection. They are irrelevant, but in view of the fact that the original papers have been referred to in connection

(Testimony of Luella Ingersoll.)

with cross-examination, we will allow you to offer them.

Mr. McCOURT.—I don't care to offer them and you can't get them in unless you introduce them by a witness.

Mr. UELAND.—We object as not the best evidence. Certified copy is not the best evidence.

COURT.—The statute makes certified copies competent testimony. The Government is entitled to offer certified copies.

Mr. LIND.—If your Honor is disposed to admit that class of evidence as original evidence without reference to its connection with the testimony, why we don't object to it.

COURT.—They will be admitted as certified copies of public records.

Deed marked "U. S. Exhibit 54."

Mortgage marked "U. S. Exhibit 55."

COURT.—Do your pleadings refer to all these?

Mr. McCOURT.—Not by date, but as having been made directly after proof in furtherance of the original conspiracy charged.

Mr. LIND.—They are not designated.

Witness excused. **[243—75]**

[Testimony of Mrs. C. E. Lovejoy, for the Government.]

Mrs. C. E. LOVEJOY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

What is your name? A. Mrs. Lovejoy.

(Testimony of Mrs. C. E. Lovejoy.)

Q. Where do you live, Mrs. Lovejoy?

A. Astoria.

Q. Where did you live in the year 1900? I refer more particularly to the months of January, February, March and April.

A. I lived in Albany.

Q. You know Mrs. Luella Beeman?

A. Yes.

Q. Do you know S. A. D. Puter?

A. Yes.

Q. Daniel W. Tarpley? A. Very slightly.

Q. Horace G. McKinley? A. Yes.

Q. Do you know Frederick Kribs? A. No.

Q. You don't know him? Do you recall the incident of having made a filing upon a timber claim in January or February of 1900? A. Yes.

Q. Tell the Court what induced you to make the filing.

Mr. LIND.—I would a little rather she would state the facts, your Honor, in regard to it.

COURT.—She may state how she came to make the filing. I suppose that is what he is trying to get at.

A. Mrs. Beeman told me that if I filed on the claim I would get $100 for it.

Q. Did she state where the $100 would come from? **[244—76]** A. Yes.

Q. Where did she say?

Objected to as incompetent and hearsay.

COURT.—I think you can show what she did, and from whom she received the $100, but I do not think Mrs. Beeman's statement to her as to who would give

(Testimony of Mrs. C. E. Lovejoy.)

her the $100 would be vital in this suit.

Mr. McCOURT.—Mrs. Beeman has already testified that Mr. Puter employed her.

COURT.—I know she testified that she procured this witness to make the filing at Puter's request. What she may have told this witness as to what Puter would do would be hearsay.

Q. What did you do, then?

A. I went to Roseburg to file on the claim.

Q. Was Mr. Puter there? A. Yes.

Q. When you went to file?

A. No, I think not. I thought that he was, but they told me that he was not there. That is as near as I can remember.

Q. What is your recollection?

A. I can't remember, but I thought that he was; and it seems to me yet that he was there. They say that he was not there.

Q. Do you recall whether Mr. McKinley was there? A. Yes, Mr. McKinley was there.

Q. Well, after you filed on the land, what did you do? Where did you go to?

A. Well, I went back to Albany.

Q. Then, what next occurred in the transaction?

A. In that transaction, the next that occurred was we went **[245—77]** down to Roseburg to prove up, or to prove on it.

Q. Where did you go from to Roseburg?

A. I went from Seattle to Roseburg.

Q. How did you get information that it was time to prove up?

A. Mr. McKinley telephoned to me at Seattle.

(Testimony of Mrs. C. E. Lovejoy.)

Q. From where? A. From Salem.

Q. And how long was that before you went to Roseburg? A. The day before I went.

Q. Well, when you got to Roseburg, what occurred? A. We went to the land office.

Q. And what did you do?

A. I don't know—I suppose that we proved up on the claim.

Q. Well, how did you do that? Just tell the Court how that was done, as you recall it.

A. Well, I was asked to swear, and I don't know what I swore to.

Q. Did you sign anything?

A. I can't remember of signing anything in the land office.

Q. Did you sign anything anywhere?

A. I can remember of signing a paper.

Q. Where?

A. When I received the $100. And I don't know where that was, unless it was in—it was not in the land office, though.

Q. When you were making proof there, who was present, if you recall, that you knew?

A. Mrs. Beeman, Mr. Puter, and that is all that I knew, was present. **[246—78]**

Q. Was there anyone else there? A. Yes.

Q. How many other persons?

A. I don't know. I can't remember at all.

Q. About how many?

A. Well, I have not the slightest idea how many there were there.

Q. Well, were there any others?

(Testimony of Mrs. C. E. Lovejoy.)

A. There were others, yes.

Q. Well, now, who was it gave you the $100?

A. Mr. Puter.

Q. Do you remember where it was he gave it to you?

A. It seems to me, as near as I can remember, it was in a room in the hotel.

Q. Who was present when he gave you the money? A. Mrs. Beeman.

Q. What sort of money did he give you?

A. A bill, or bills.

Q. Do you know who paid for the land?

A. No.

Q. Did you pay your expenses down there on either trip?

A. I paid my way back to Seattle, but my way was paid from Seattle to Roseburg.

Q. By whom, do you know?

A. By Mr. McKinley.

Q. Your first trip up there, who, if anybody besides yourself, paid your expenses?

A. Well, I don't know who paid it, but it was all —it was paid. Now, that is all I know about it.

Q. Who paid your hotel bill and other expenses besides **[247—79]** traveling?

A. It was paid the same way; somebody paid it.

Q. Do you know what those instruments or papers were that you signed there after you left the land office? A. No, I didn't know what they were.

Q. Did anyone state what they were?

A. No, I don't think they did.

Q. Who gave you the papers to sign?

(Testimony of Mrs. C. E. Lovejoy.)

A. Mr. Puter.

Q. Was anyone present besides yourself and Mrs. Beeman and Puter?

A. I can't think there was—I don't think there was. I can't think of any one.

Q. What did you understand was to become of this timber claim, when you first started into it, and before you filed?

Mr. LIND.—Wait a moment. From whom? I think that is too general, your Honor—hardly fair to the defendants.

COURT.—She may state what she intended to do with it, what her understanding was about it.

A. I filed on the claim for the $100. I didn't know what was going to become of the land afterwards.

Q. How is that?

A. I didn't know what was to become of the land.

Q. Did you understand that you were going to have the land to keep it? A. No.

Q. Well, what did you understand as to what was to become of the land?

A. Well, I didn't think anything about it.

Q. I will ask you if you had anything, yourself, to do with **[248—80]** advertising the proof—advertising the notice in the newspaper in regard to the time of proof? A. No.

Q. Do you know whether or not you ever deeded this land to anybody?

A. No, I don't know that.

Q. Where did you go after you left Roseburg from making that proof?

(Testimony of Mrs. C. E. Lovejoy.)

A. Back to Seattle.

Q. Did you stop at Albany? A. No.

Q. Sure of that? A. Sure of it.

Q. When were you next in Albany after that?

A. Well, it was many months. I don't know just when I was there again.

Q. Was Mr. Beeman in Roseburg? A. No.

Q. Did you see him on that occasion at all?

A. No.

Q. How long after that was it before you saw Mr. Beeman?

A. Oh, I cannot say; I don't know.

Q. Did you ever see him since?

A. Yes, I have seen him since then.

Q. About how long after that time was it?

A. I think it was about a year after that, that I was back to Albany.

Q. What was your name at that time, Mrs. Lovejoy? A. Mrs. G. L. Moulton.

Q. G. L. or J. L.? A. G. L.

Q. Your name appears as Jennie, does it not?

A Oh, yes, that is the way I signed my name, as Jennie [249—81] Moulton.

Q. Were you married at that time? A. Yes.

Q. Where was your husband?

A. In Albany.

Q. Do you know A. M. Crawford? A. No.

Q. John Hamlin? A. No.

Q. Did you ever see any such persons when you were there? A. No.

Q. In connection with signing the papers that Mr. Puter gave you?

(Testimony of Mrs. C. E. Lovejoy.)

A. No, not that I remember of. I might have.

Q. How many days did you stay in Roseburg?

A. I think we were there 24 hours about.

Q. I will ask you whether or not you saw Horace G. McKinley at that time? A. Yes.

Q. Where?

A. At the hotel, and at the Land Office.

Q. Did you have any conversation with either Puter or McKinley before going into the Land Office to make your proof?

A. No, I don't think I did.

Q. State whether or not you were given any instructions, either by Puter or McKinley, as to the testimony you should give in your proof.

A. No.

Mr. LIND.—That is leading. Well she already [250—82] has answered it.

Q. I will ask you if you ever signed any instruments in connection with that transaction except that one time, the day you made proof there?

A. Not that I remember of.

Q. Have you ever seen any of the parties—Puter, McKinley, Tarpley or Kribs in connection with the matter since that time? A. No.

Mr. McCOURT.—I offer in evidence certified copy of the record of a mortgage purporting to have been made by Jennie Moulton to Frederick A. Kribs on the 16th day of May, 1900, and recorded on May 18, 1900.

Mr. LIND.—Well, do you really think it is important to incumber the record with these things that are admitted?

(Testimony of Mrs. C. E. Lovejoy.)

Mr. McCOURT.—I think it is important to show that there was a mortgage and a deed absolute given at the same time, on the same date, relative to the same transaction—one dated one day, one dated a few days later—in connection with the allegations of fraud contained in the complaint.

COURT.—Let it be admitted. The witness testified she signed all these papers at the time she made final proof.

Mr. McCOURT.—Yes.

Marked "U. S. Exhibit 56."

Mr. McCOURT.—Then I wish to offer the deed. which purports to have been dated on the 19th day of May, and recorded upon the 21st day of May—both certified **[251—83]** copies of the record.

Marked "U. S. Exhibit 57."

Cross-examination.

(Questions by Mr. LIND.)

Mrs. Moulton, you were living—that is, at the time this entry was made, your name was Miss Moulton?

A. Mrs. Moulton.

Q. Mrs. Moulton? A. Yes, sir.

Q. You were then living at Albany?

A. Yes.

Q. Who was the first person that ever spoke to you about filing this claim? A. Mrs. Beeman.

Q. Did you ever have any talk with anybody except Mrs. Beeman on the subject? A. No.

Q. Never anywhere?

A. She and Mr. Beeman. I talked to them about it.

Q. You talked a good deal with Mr. Beeman, did

(Testimony of Mrs. C. E. Lovejoy.)

you not? Did you talk a good deal with Mr. Beeman about it?

A. Not any more than I did with Mrs. Beeman, and not as much.

Q. On more than one occasion?

A. Well, I stayed at their house a great deal.

Q. And that is how this matter came up?

A. Yes.

Q. Did you stay at their house most of the time when you were in Albany?

A. When I was in Albany, yes.

Q You stated that during the months of January, February, **[252—84]** March and April of that year you were in Albany most of the time?

A. Yes.

Q. How did you happen to be at Seattle?

A. I went to Seattle on a visit.

Q. Did you remain long in Seattle?

A. Well, I stayed in Seattle from that time on for six years.

Q. Continuously?

A. No. I was to and from Albany and back to Seattle.

Q. At different times? A. Yes.

Q. Did you ever have any talk with Mr. McKinley about this claim? A. No, I did not.

Q. Do you remember when you first went to Roseburg to make your filing?

A. I remember when I went.

Q. You remember when you went?

A. I don't remember any dates. I don't remember the times.

(Testimony of Mrs. C. E. Lovejoy.)

Q. No. But you remember the occasion?

A. Yes.

Q. Did you see Mr. McKinley on that occasion?

A. Yes.

Q. Did you have any talk with him about this matter? A. No.

Q. And then when you went to prove up, you saw Mr. Puter? A. Yes.

Q. Did you have any talk with Mr. Puter, before you proved up? A. No. **[253—85]**

Q. You say you did have some talk with him afterwards in a room in the hotel? A. Yes.

Q. Who were present at that time?

A. Mrs. Beeman and Mr. Puter is all I can remember. If there was anyone else, I don't remember.

Q. You don't recall? A. No.

Q. What was the talk about, mortgage or mortgages?

A. There was no talk about mortgages.

Q. No talk about mortgages? A. No, sir.

Q. Any talk about deeds? A. No.

Q. Did you sign any mortgage or deed that you remember?

A. I signed a paper—signed my name to something.

Q. Did you ask what it was? A. No.

Q. Did you look to see what it was?

A. No.

Q. Did you sign any papers as a witness?

A. Not that I remember of.

(Testimony of Mrs. C. E. Lovejoy.)

Q. Did anybody sign any papers as a witness for you?

A. Well, I don't just remember whether I did or not.

Q. As a matter of fact, you don't remember much about what did happen? A. No, I don't.

Q. Or what was said or what was done?

A No, I don't remember very much about it.

Q. And since then, you have seen nobody in connection with this matter, have you? A. No.

Q. I guess that is all.

Mr. McCOURT.—One or two questions that are more in the nature of direct, that I overlooked. **[254—86]**

(Examination by Mr. McCOURT.)

Q. I will ask you if you ever visited the land upon which you filed, Mrs. Lovejoy? A. No.

Q. Do you know where the land was, or is?

A. No, I don't know where it is.

Q. Did you stop anywhere in Oregon after you left Roseburg on your way to Seattle?

A. I stopped at Portland.

Q. How long?

A. I arrived in Portland at 7 o'clock, and I left at 2.—2 o'clock, I think.

Q. In the morning?

A. Seven in the morning, and left at 2 in the afternoon.

Q. Did you see Mr. Puter or Mr. McKinley?

A. I saw them, but I didn't speak to them.

Q. Did they come on the same train that you did?

(Testimony of Mrs. C. E. Lovejoy.)

A. Mr. Puter did. I don't remember seeing Mr. McKinley.

Q. In that meeting that you had in the hotel there, when you got the $100, did you have any dispute with Mr. Puter about the money you should receive? A. Yes.

Q. What was that?

A. He wanted to hold out what he had paid for my ticket from Seattle—from Seattle down to Portland. I said "No, I want the $100." And he gave it to me, but he refused to buy me a ticket back to Seattle.

Q. Where did he buy you a ticket to?

A. Portland.

Q. Was that before or after you had signed the papers? A. After I had signed the papers.

[255—87]

Q. How long after?

A. Very few minutes after.

Q. Well, how long was that after you had made your proof in the Land Office?

A. About four or five hours, as near as I can remember. It was in the same afternoon.

Q. Did you see Mr. Kribs there at that time?

A. Not that I remember of.

Q. You did not receive any introduction to him?

A. I cannot remember of receiving an introduction to Mr. Kribs.

(Examination by the COURT.)

Q. Mrs. Lovejoy, am I right in understanding that you went from Roseburg, after you made your final proof, direct to Seattle? A. Yes.

Q. And what time did you return to Albany?

(Testimony of Mrs. C. E. Lovejoy.)

A. Well, I didn't come back to Albany for several months.

Q. I understood you to say that you were in Albany in March and April of 1900.

A. I don't remember saying that, and I don't remember whether I was or not.

Q. Well, I understood you, in answer to a question of counsel, to say you were in Albany in January, February, March and April. This final proof was made on the 26th of February.

Mr. McCOURT.—No, the 16th of May. It was the filing that was made on the 26th of February. The filing was made on the 26th of February.

COURT.—Then that is my mistake. I thought the final proof was made on the 26th of February. **[256—88]**

Mr. McCOURT.—No, the 16th of May, was when the final proof was made.

Redirect Examination.

Q. How long before this final proof was it that you had gone to Seattle?

A. As near as I can remember, about a month. I can't just remember.

Q. And how long was it after you had made your filing that you went to Seattle, as you recall it?

A. I went right directly to Seattle.

Q. After you had made your filing, I mean?

A. Well, I can't tell. I don't remember when I went.

Witness excused.

Whereupon proceedings herein were adjourned until to-morrow morning at 10 o'clock. **[257—89]**

[Proceedings Had at] Portland, Or., April 20, 1910, 10 A. M.

Mr. McCOURT—If the Court please, in order to expedite matters, I would like the record to show, in a concrete form, this list of entries, which we claim are connected with the entries in question here, and include them, showing the addresses of the parties, and the fact that a contest was filed, by the Northern Pacific Railroad Company against those lands, afterwards relinquished, and also showing in groups the dates upon which filings were made. I have them classified here, and I imagined that counsel would consent, probably, to have them put into the record much as I have them here, because they would then be presented to the Court without the necessity of going through them and picking out as to residence and groups and entrymen, and the other transactions. They are taken from the Land Office records. We have the records here, and we have the officer. It would take a day pretty near to go through it, and it would only take about fifteen minutes if it may be done in this way.

Mr. LIND.—Your Honor, we have no objection to any group of the entries involved in the suit that would facilitate a better understanding of the evidence and of the issues, but we certainly shall object to going into the consideration of other entries, or alleged entries, not involved in the suit. There is no allegation of conspiracy on the part of the defendants in respect of any other matter than that involved in the suit. And the Supreme Court of the United States has expressly **[258—90]** passed on this ques-

tion. My recollection is that it is in the Budd case, that other alleged fraudulent entries are not admissible, cannot be inquired into in a proceeding of this character.

COURT.—Well, the district attorney can offer them for identification, and that question can be considered hereafter, if they become material.

Mr. McCOURT.—What I desired to do, if the Court please, was to name over the persons, with their addresses and the land entered, as shown by the Land Office records, with the number of the Timber and Stone Sworn Statements. Now, then, the evidence that we will introduce hereafter will show that all together these parties made fifty-seven entries, or had them made; that the Northern Pacific Railroad Company about as they made the filings, or shortly after they made the first filing, filed a contest notice against them, alleging that the entries were fraudulent. In the controversy that ensued, Horace McKinley was arrested, and as they appeared down in Roseburg to make proof, most of the defendants being there, or a great many of them being there, and among them Mr. Kribs and Mr. Puter, the hearing was had, and an agreement was arrived at with the Northern Pacific Railroad Company, whereby these people agreed to secure twenty-four relinquishments; that is, let go of twenty-four claims they were claiming, and let the Northern Pacific Railroad Company take them. Now, that is admissible for the purpose of showing notice, if nothing else, to the defendant Kribs, and from him to the defendant Smith, as we expect to connect them up later. So that for

that purpose, the fact of those entries is admissible.

[259—91]

COURT.—The alleged fraudulent character of the entries now in controversy?

Mr. McCOURT.—Yes, together with the others all in the same group and transaction. And without putting in all of these Land Office records and calling attention to the books here, I thought, if counsel would permit me, to read into the record what the books show. They may have the privilege of verifying them, because we have the books here.

Mr. LIND.—If it is the intention of the District Attorney to dispense with the record evidence, by reading an abstract on the question of fraud into the record, I cannot consent, because if fraud is to be predicated on this, then, the full data should go in. Whereas, a mere tabulation for the convenience of the Court and counsel, there is no objection to. Now, if the Court will pardon me a moment, that I may have a conference with the District Attorney?

COURT.—Yes.

(Counsel confer together.)

Mr. McCOURT.—Counsel have agreed that the matter which I desired to read into the record may be read into it subject to their objection as to those entries not involved in the suit.

COURT.—Very well.

Mr. LIND.—Yes. On the ground that as to those entries it is incompetent and irrelavant and hearsay.

COURT.—Very well. I will let it in subject to the objection, and you may save the question.

Mr. LIND.—Yes.

COURT.—Mr. McCourt, does this list include any [260—92] that were offered yesterday?

Mr. McCOURT.—It includes the entire list that was offered yesterday, as well as the others, giving the names and descriptions. I was going to give them in a tabulated form, so it will appear in the record in concrete shape, and it will save a great deal of going back and examining the records hereafter. The Timber and Stone Sworn Statements are as follows: No. 762, Josephine Jacobs, Portland, southeast quarter of section 22, township 14 south, range 3.

Mr. LIND.—Instead of reading that into the record, why can't the stenographer copy that at her convenience?

Mr. McCOURT.—I think she can when I read to the fourth one, and designate what it means here, she can copy from that time on.

COURT.—Very well.

Mr. McCOURT.—Relinquished the 3d day of January, 1903, re-entered the 3d day of January, 1903. No. 763, Sadie E. Puter, Portland, northeast quarter of section 20, township 14 south, range 3. No. 764, Elvira Jacobs, northwest quarter of section 22, township 14 south, range 3. No. 765, Mattie McDaniel, Portland, southeast quarter of section 20, township 14 south, range 3, relinquished April 19, 1900, selected by Northern Pacific Railroad Company the 23d day of April, 1900.

Now, for the stenographer's information, from that point on, the right-hand column of figures indicate selection by the Northern Pacific Railroad Com-

pany of the several selections, and may be copied from this list. **[261—93]**

[List of Timber and Stone Sworn Statements.]

COURT.—Furnish counsel for the defendants with a copy.

Mr. McCOURT.—Yes.

No.	Name.	Address.	Description.		
762A	Josephine Jacobs°	Portland	SE.	1/4-22-14-3	Rel. 1/13/03-1/3/03
763A	Sadie E. Puter	"	NE.	1/4-20-14-3	
764A	Elvira Jacobs	"	NW.	1/4-22-14-3	
765A	Mattie McDaniel*	"	SE.	1/4-20-14-3	Rel. 4/19/00-4/23/00
766A	Clarence Lerwill*	Monroe	NE.	1/4-24-14-2	Rel. 4/19/00-4/23/00
767A	C. Frank Starr*	Salem	NE.	1/4-28-14-3	Rel. 4/19/00-4/23/00
768A	Basil H. Wagner°	"	SW.	1/4-28-14-3	
769A	H. C. Barr-	Albany	SE.	1/4-24-14-2	
770A	S. A. D. Puter	Portland	NW.	1/4-20-14-3	
771A	W. J. Drinkard*	Halsey	SE.	1/4-28-14-3	Rel. 4/19/00-4/23/00
772A	Claude D. Lee*	Junction Cy.	NW.	1/4-24-14-2	Rel. 4/19/00-4/23/00
773A	Charles F. Smith*	Roseburg	NE.	1/4-32-14-3	Rel. 4/19/00-4/23/00
774B	Chas. Brochett*	Salem	NW.	1/4-32-14-3	Rel. 4/19/00-4/23/00
775B	Walter Boone*	Roseburg	SE.	1/4-32-14-3	Rel. 4/19/00-4/23/00
776B	Jennings F. Whitney*	Roseburg	SW.	1/4-32-14-3	Rel. 4/19/00-4/23/00
777B	John J. Jaggy-	Roseburg	SE.	1/4-34-14-3	
778B	Edmond E. Archambeau*	Roseburg	NE.	1/4-33-14-3	Rel. 4/19/00-4/23/00
779B	Neal Dozier	Roseburg	SW.	1/4-34-14-3	
780B	Zebulin Smith	Roseburg	NW.	1/4-34-14-3	
782C	Thomas Wilson	Roseburg	NW.	1/4-28-14-3	
783D	Anthony T. Thompson*	Roseburg	NW.	1/4-30-14-3	Rel. 4/19/00-4/23/00
784D	Enos Conn*	Roseburg	SE.	1/4-30-14-3	Rel. 4/19/00-4/23/00
785D	E. C. Brandeberry*	Albany	SE.	1/4-33-14-3	Rel. 4/19/00-4/23/00
786D	C. I. Barr*	Albany	SW.	1/4-33-14-3	Rel. 4/19/00-4/23/00
787D	Charles Farrell*	Albany	NW.	1/4-33-14-3	Rel. 4/19/00-4/23/00
788D	Vicie A. Lunn@	Salem	NE.	1/4-22-14-3	Can. 4/23/00-4/23/00
789D	H. George Meyer@	Salem	SW.	1/4-22-14-3	Can. 4/23/00
790D	Carrie L. Meyer@	Salem	NE.	1/4-30-14-3	Can. 4/23/00-4/23/00
797E	John L. Green	Salem	NW.	1/4-35-14-3	
798E	Jay S. Phillips	Salem	NE.	1/4-34-14-3	
799E	Charles Burley	Salem	SE.	1/4-35-14-3	
800E	Charles Barr	Salem	SW.	1/4-35-14-3	
801E	Edward Finley	Salem	NE.	1/4-35-14-3	
802E	Sell Finley*	Salem	SW.	1/4-30-14-3	Rel. 4/19/00-4/23/00
803E	Rufus Drum°	Albany	SW.	1/4-24-14-2	
804F	John Pilkington*	Roseburg	NE.	1/4-26-14-3	Rel. 4/19/00-4/23/00
805F	Lee Minard*	Roseburg	SW.	1/4-26-14-3	Rel. 4/19/00-4/23/00
806F	James H. Doty*	Roseburg	NW.	1/4-26-14-3	Rel. 4/19/00-4/23/00
814F	Douglas Adkinson	Roseburg	SW.	1/4-24-14-3	
815F	Ira A. Pilkington°	Roseburg	SE.	1/4-26-14-3	
816F	Harry Saltmarsh	Albany	NW.	1/4-24-14-3	
867G	Jennie Moulton	Albany	E. 1/2, W. 1/2-32-14-4		
868G	Luella Beeman	Albany	Lot. 4-S. 1/2 SE. 1/4-31-SW. 1/4 SW. 1/4-32-14		
869G	George L. Thompson	Albany	NW.	1/4-14-14-3	
870G	Isaac R. Borum	Albany	SW.	1/4-14-14-3	
871G	Benjamin F. Kirk	Albany	NE.	1/4-14-14-3	
872G	Benjamin F. Snyder*	Salem	SE.	1/4-24-14-3	Rel. 4/19/00-4/23/00
873G	Hugh Blakely	Brownsville	Lot 4-N. 1/2 SE. 1/4-30-SW. 1/4 SW. 1/4-29-14		
874G	James P. Cooley	Brownsville	Lot 3-N. 1/2 SE. 1/4-31-NW. 1/4 SW. 1/4-32-14		

[262—94]

No.	Name.	Address.	Description.
875G	Frank W. Burford	Brownsville	Lot 2–S. 1/2 NE. 1/4–31–SW. 1/4 NW. 1/4–32–14–4
876G	John Harrison	Brownsville	Lot 1–N. 1/2 NE. 1/4–30–NW. 1/4 NW. 1/4–29–14–4
877G	Robert S. Henderson*	Salem	NE. 1/4–24–14–3. Rel. 4/19/00–4/23/03
878G	Henry B. Blakely	Brownsville	Lot 3–N. 1/2 SE. 1/4–30–NW. 1/4 SW. 1/4–29–14–4
879G	Peter Buffington	Albany	SE. 1/4–14–14–3
880G	Jacob W. Stilwell	Brownsville	Lot 1–N. 1/2 NE. 1/4–31–NW. 1/4 NW. 1/4–32–14–4
881G	Frank J. Harrison	Brownsville	Lot 2–S. 1/2 NE. 1/4–30–SW. 1/4 NW. 1/4–29–14–4
882G	Elam Miller	Albany	NE. 1/4–31–14–3

Note: Address that of record when filed.
* Relinquished to Northern Pacific.
@ Cancelled for failure to make proof.
° Not involved in this case.
- Dead.

Mr. McCOURT.—Now, then, the groups of filings as they appear by dates may also be copied by the stenographer.

COURT.—Those are the filings involved in 3320?

Mr. McCOURT.—No, those are the filings involved in the entire fifty-seven cases, the dates when they were made.

COURT.—I mean in Suit 3320.

Mr. McCOURT.—3320, including the twenty-four that were relinquished.

COURT.—Very well.

[Statement of Groups of Filings.]

"A"

January 19, 1900.

–Barr, H. C.
*Drinkard, W. J.
Jacobs, Elvira S.
°Jacobs, Josephine
*Lee, Claude D.
*Lerwill, Clarence
*McDaniel, Mattie
Puter, S. A. D.

Puter, Sadie
*Smith, Charles F.
*Starr, C. Frank
°Wagner, Basil

"B"

January 20, 1900.

*Archambeau, Edmond L.
*Boone, Walter
*Brochett, Charles
Dozier, Neal
–Jaggy, John J.
Smith, Zebulin
*Whitney, Jennings F.

"C"

January 22, 1900.

Wilson, Thomas

[263—95]

"D"

January 23, 1900.

*Barr, C. I.
*Brandeberg, E. C.
*Conn, Enos
*Farrell, Charles
@Lunn, Vicie A.
@Meyer, Carrie L.
@Meyer, H. George
*Thompson, Anthony L.

"E"

January 31, 1900.

Barr, Charles
Burley, Charles
Drum, Rufus
Finley, Edward

*Finley, Sell
Green, John L.
Phillips, Jay S.

"F"

February 1, 1900.

Adkison, Douglas
*Doty, James H.
*Minard, Lee
*Pilkington, John
Pilkington, Ira
Saltmarsh, Harry

"G"

February 26, 1900.

Beeman, Luella
Blakely, Henry B.
Blakely, Hugh
Borum, I. R.
Buffington, Peter
Burford, Frank W.
Cooley, James P.
Harrison, Frank
Harrison, John
*Henderson, Robert S.
Kirk, Benjamin F.
Miller, Elam
Moulton, Jennie
*Snyder, Benjamin F.
Stilwell, Jacob W.
Thompson, George L.

–Dead.
*Relinquished prior to proof.
°Patents not issued.
@Failed to submit proof, cancelled.

Mr. McCOURT.—And the next matter that I want to put into the record in similar shape was the dates of proofs. The persons making the proofs showing the dates upon which they made them. Those are merely those involved in this case.

Mr. LIND.—That is already in evidence.

Mr. McCOURT.—Yes. It is really in the record, but I ask the privilege of putting it there so we can refer to it.

[Statement of Dates of Proofs.]

"1"

April 18, 1900

Adkinson, Douglas
Barr, Charles
–Barr, Harry C.
Burley, Charles
Dozier, Neal
Finley, Edward
Green, John L.
–Jaggy, John J.
Phillips, Jay S.
°Pilkington, Ira
Puter, S. A. D.
Puter, Sadie E.
Saltmarsh, Harry
Smith, Zebulin
Wagner, Basil
Wilson, Thomas

"2"

April 19, 1900.

°Drum, Rufus
Jacobs, Elvira S.
°Jacobs, Josephine

"3"

May 16, 1900.

Beeman, Luella
Blakely, Henry B.
Blakely, Hugh
Borum, Isaac R.
Buffington, Peter
Burford, Frank
Cooley, James P.
°Harrison, Frank
Harrison, John
Kirk, Benjamin F.
Miller, Elam
Moulton, Jennie
Stilwell, Jacob W.
Thompson, George L.

-Dead.
°Not involved in case.

[265—97]

Mr. McCOURT.—Now, then, in regard to the proof matters, I would like to show the fees collected upon the dates of proofs for the several entries by the Land Office, as shown by their records, to be later followed showing who paid it.

COURT.—Very well.

Mr. LIND.—That there will be no dispute about, as far as that is concerned. It was all paid out by checks.

Mr. McCOURT.—You have them?

Mr. LIND.—Yes, we have them. There will be no controversy about it.

Mr. McCOURT.—Well, I can forego that for the

present, although something ought to appear in the record to show the amounts and show that the check really checked the amount.

Mr. LIND.—You better put it in. I have not discussed it with my client.

Mr. McCOURT.—I will merely hand this to the stenographer and ask her to put it in, with the exception of some memorandum I have on the right-hand column.

Mr. LIND.—There is no objection.

[266—98]

[Statement of Fees Collected.]

April 18, 1900.

Cert.	Purchaser.	Price.	Fees.
8168	S. A. D. Puter	$400.00	$23.77
8169	Ira A. Pilkington	400.00	10.73
8170	John L. Green	400.00	10.95
8171	Thomas Wilson	400.00	10.74
8172	Chas. Barr	400.00	10.70
8173	Charles Burley	400.00	10.70
8174	Neal D. Dozier	400.00	10.62
8175	Basil H. Wagner	400.00	10.95
8176	Harry Saltmarsh	400.00	10.64
8177	Harry C. Barr	400.00	10.70
8178	Edward Finley	400.00	10.65
8179	John J. Jaggy	400.00	10.65
8180	Jay S. Phillips	400.00	10.76
8181	Zebulin Smith	400.00	10.75
8182	Douglas Adkinson	400.00	10.62
8183	Sadie Puter	400.00	10.57
		$6400.00	$184.50
		184.57.	
	Total	$6584.57	

April 19, 1900.

8184	Josephine Jacobs	$400.00	$10.45
8185	Rufus Drum	400.00	10.51
8186	Elvira S. Jacobs	400.00	10.75
		$1200.00	31.71
		31.71	
	Total	$1231.71	

May 16, 1900.

8231	Isaac R. Borum	$400.00	$10.45
8232	Benj. F. Kirk	400.00	10.45
8233	George L. Thompson	400.00	10.44
8234	Peter Buffington	400.00	10.43
8235	John Harrison	426.48	10.52
8236	Jennie Moulton	400.00	10.43
8237	Frank J. Harrison	426.63	10.51
8238	James B. Cooley	427.40	10.49
8239	Jacob W. Stilwell	427.08	10.47
8240	Luella Beeman	427.58	10.44
8241	Henry Blakely	426.78	10.51
8242	Hugh Blakely	426.93	10.45
8243	Elam Miller	400.00	10.38
8244	Frank W. Burford	427.25	10.49
		$5,816.13	$146.46
		146.46	
	Total	$5,962.59	

[267—99]

Mr. McCOURT.—Now, then, I would like to have it stipulated into the record that the Northern Pa-

cific Railroad Company, prior to April 18, 1900, and after the filings were made of the entries involved in this case, filed a contest by Thomas Cooper, its land agent, against each and every one of the entries, and that on or about the 18th day of April, and the first day of May, the Northern Pacific Company dismissed its contest as to thirty-three of the entries, including the twenty-eight, or such a matter, that are included in this case.

Mr. LIND.—I don't know anything about the facts, except as I believe some things.

Mr. McCOURT.—I have the record here showing that.

Mr. LIND.—Just a moment. Let me see what you have in that record, whether it will shorten the record.

Mr. McCOURT.—Yes, I have the contest affidavit in the case here and here is the record as shown by the contest docket. That is one. They are all alike. Counsel suggests that we present that matter in the form of a stipulation, that we may agree upon in written form a little later during the day.

COURT.—Very well.

Mr. McCOURT.—And for the purpose of the testimony of other witnesses, it may be considered as available as though it was already shown, by reference to this record. **[268—100]**

[Testimony of Thomas R. Wilson, for the Government.]

THOMAS R. WILSON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Wilson?

A. Salem, Oregon.

Q. How long have you lived at Salem, Mr. Wilson? A. Seven years.

Q. Where did you live before you went to Salem to reside? A. Portland.

Q. What was your business in Portland?

A. I was connected with the Southern Pacific News Company.

Q. What has been your business since you resided in Salem? A. Accountant. Bookkeeper.

Q. At what institution?

A. At the Penitentiary.

Q. Do you know Horace G. McKinley?

A. I do.

Q. How long have you been acquainted with him?

A. Ten or eleven years.

Q. And do you know S. A. D. Puter?

A. Yes.

Q. Dan. W. Tarpley? A. I do.

Q. How long have you known them?

A. I have known Tarpley about the same length of time, and Puter probably six or eight months later.

(Testimony of Thomas R. Wilson.)

Q. Do you recall the incident of making a filing upon a timber claim in Linn County in the year 1900?

A. I do.

Q. State to the Court the circumstances under which you made the same, and leading up to making thereof.

A. Well, I was acquainted with McKinley and Tarpley, and Mac told me that he was going to take up some timber claim.

Mr. LIND.—I did not hear the last.

A. I was acquainted with McKinley and Tarpley, very well acquainted with them; and Mr. McKinley asked me if I wanted to file on a timber claim. I told him I would. The time came, and he told me to go to Roseburg. We went to Roseburg together, and I filed on a claim down there. I have forgotten now—I was to receive all expenses, and I think it was either $75.00 or $100. I would not be sure what I got. It was either one or the other, my expenses were paid to Roseburg and back.

Q. Well, that was for filing?

A. That was filing?

Q. Then what later occurred?

A. Well, we went back. I don't know exactly how long it was afterward—probably a month or two, went back and made the final proof. My expenses were paid.

Q. Do you know who had the notice of proof published? A. I do not.

Q. Did you? A. No.

Q. How did you ascertain when it was time to go back to **[270—102]** Roseburg to make proof?

(Testimony of Thomas R. Wilson.)

A. Mr. McKinley notified me.

Q. How? A. Verbally.

Q. Where were you then living?

A. Portland.

Q. Where did you make proof?

A. I think it was Roseburg.

Q. Was there any one else making proof there upon that day?

A. Mr. Wagner, I believe was the only one that I knew.

Q. Basil H. Wagner? A. Yes.

Q. What time of day did you make proof?

A. I don't know what time of day it was. Along in the afternoon, probably. I don't know for sure.

Q. State whether or not Mr. McKinley or Mr. Puter or Tarpley were there?

A. Mr. McKinley was there I think. Mr. Tarpley also.

Q. Well, what occurred after you had gotten your proof made in the Land Office?

A. We came back to Portland.

Q. Anything else in connection with the entry?

A. I don't understand, what part—what did we do in connection with the entry?

Q. Yes, anything you did in connection with the entry right after you made proof, or soon after?

A. I don't remember anything specially, no.

Q. Well, did you sign any papers of any kind?

A. I don't know whether I signed the papers in Roseburg or Portland. I cannot recall the date when I signed. It was supposed to be a deed or mortgage. **[271—103]** I don't know which it was. I

(Testimony of Thomas R. Wilson.)

can't recall whether I signed it in Roseburg or Portland.

Q. In whose presence did you sign it?

A. I don't know—don't remember.

Q. Well, what occurred when you did sign it?

A. Well, that finished the deal, I guess.

Q. Well, was there anything paid you?

A. I got $75.00 or $100, as I stated. I don't remember which it was.

Q. Who paid it to you? A. McKinley.

Q. Do you know John H. Shupe?

A. No, sir.

Q. How?

A. I don't remember the gentleman.

Q. Do you recall signing any instrument in his presence? A. I do not.

Q. Who was present when McKinley paid you the $100.00?

A. I think I got it in Portland here. I don't remember anybody being present.

Q. Do you know whether Basil H. Wagner was there? A. I do not.

Q. Well, now, you say McKinley told you that there would be $75.00 or $100 in that—when did he tell you that?

A. Before I left Portland—so much and expenses.

Q. Before you left to make the filing?

A. Yes.

Q. If you did mortgage the land, do you know whom you mortgaged it to? **[272—104]**

A. I do not.

(Testimony of Thomas R. Wilson.)

Q. Do you know whom you deeded it to, if you did deed it? A. No, sir.

Q. Do you know whether you did deed it or not?

A. I remember signing something, but I don't know whether it was a deed or mortgage now. I could not tell you now.

Q. When did you next hear of the claim, or anything relating to it, after you had made proof?

A. What was the question?

Q. When did you next hear of the entry, after you had made proof, and got your $75.00 or $100.00?

A. Well, there was some—few months *months* later, there was a special agent came out here, and we had to go before the special agent and sign an affidavit, or a paper of some kind, relative to the claim, the condition of things out there, which I supposed it was.

Q. How did you learn of the presence of the special agent? A. Mr. McKinley.

Q. Where did he tell you about it?

A. At a room in the Imperial Hotel.

Q. How did you happen to be in the room?

A. I was shown to the room.

Q. By whom? A. Mr. McKinley.

Q. Well, what did you do when you got in? Who was **[273—105]** in the room?

A. A gentleman in there supposed to be a special agent, of the Government.

Q. Do you know what his name was?

A. I do not.

Q. Would you know his name if you heard it?

A. I don't think I would, no.

(Testimony of Thomas R. Wilson.)

Q. Anybody else in the room when you got there?

A. No, sir.

Q. What did you do when you got in the room?

A. He saluted me as Mr. Wilson, and he said to me something like this: "Well, you know what this is?" I says: "I *suposee* I do." He says: "You can just sign your name here." And I signed my name without the document being read to me.

Q. Did you read it yourself?

A. I did not. He told me it was the conditions of the claim out there, and improvements, and so on.

Q. Well, after you had signed the instrument, what did he do? Did he swear you or anything?

A. I signed my name, and he said that was all. I guess he finished it up. I didn't wait to see.

Q. What did you do then?

A. I went on about my business.

Q. Whom did you see immediately after you came out of the room?

A. I saw McKinley and Tarpley.

Q. Anybody else?

A. Not that I remember, no.

Q. Did you see Mr. Kribs around there about that time?

A. I met Mr. Kribs. I don't know whether it was that **[274—106]** day or the next day I met him.

Q. Where did you meet him?

A. Well, I don't know. It was in Portland somewhere. Washington Street or—I can't recall now where it was.

Q. Did you ever sign any other affidavit or in-

(Testimony of Thomas R. Wilson.)

strument relative to that entry after that time?

A. Not that I know of.

Q. Or before that time after you had made proof?

A. Not that I know of.

Q. When did you first meet Mr. Kribs?

A. Some time about the time the special agent was here.

Q. You had not met him before?

A. Not that I remember of, no.

Q. Do you remember seeing him in Roseburg when you made proof?

A. No, I do not. I did not meet him.

Q. Who introduced him to you in Portland?

A. I think Mr. McKinley did, if I remember right.

Q. It was about the time of this signing of this affidavit you speak of? A. I think it was.

Q. I call your attention to the affidavit of claimant in "Government's Exhibit 52," especially to the signature thereto, and ask you whether or not that is your signature?

A. I think it is, yes. Yes.

Q. That bears date the 17th day of July, 1901. Purports to have been sworn to before E. D. Stratford, special agent of the General Land Office. I will ask you whether or not you at that time, or any time before or since, knew the person in whose favor you had executed a mortgage or a deed for that land?

[275—107]

A. That I know in whose presence?

Q. No, if you at that time, or at any time prior thereto or since knew in whose favor you had made

(Testimony of Thomas R. Wilson.)

a mortgage or deed for the land included in your entry? A. No, I do not.

Mr. McCOURT.—We offer the certified copy of the record of the mortgage and deed for this land in the same connection, and for the same purpose as we offered the others yesterday.

Marked "U. S. Exhibits 58 and 59."

Mr. McCOURT.—That is all. Take the witness.

Cross-examination.

(Questions by Mr. LIND.)

When you went to make the filing on this land, did you start from Portland? A. Yes, sir.

Mr. McCOURT.—Oh, will you pardon me just a moment. There was a question I wanted to ask him.

Mr. LIND.—Yes.

Mr. McCOURT.—Did you ever see the land included in your entry?

A. Never did.

Q. Do you know where it is?

A. No, sir.

Mr. McCOURT.—It is conceded that this is the entryman mentioned in those papers, I presume.

Mr. LIND.—Yes.

Cross-examination Continued.

Q. Was Mr. McKinley on the train?

A. I believe he was, yes.

Q. He lived at Portland at that time? [276—108]

A. He made his headquarters here, yes.

Q. You knew him pretty well?

A. Yes, I did.

Q. You were friends? A. Yes.

(Testimony of Thomas R. Wilson.)

Q. You knew he was in the land business?

A. Yes, sir.

Q. He was locating settlers and locating timber lands for intending purchasers, right along, was he not? A. That I understood, yes.

Q. He told you all about this claim, the location of it? A. No, sir.

Q. How? A. I know?

A. No, I say he told you about this claim, and the location of it? A. Oh, yes. Yes.

Q. Told you it was good timber? A. Yes.

Q. And gave you the description? A. Yes.

Q. You intended to make a claim?

A. Yes, through Mr. McKinley, yes.

Q. How?

A. Through Mr. McKinley I did, yes.

Q. Did you intend to commit any fraud on the Government or any one else?

A. I did not understand anything at the time, no, not at the time I filed on the claim.

Q. Well, you filed on the claim because you wanted it, did you not?

A. What was in it for me, yes.

Q. You had not made any bargain to sell it to anybody when you filed, had you?

A. Not at that time, no. **[277—109]**

Q. You felt at liberty, the day after you filed, if anybody had offered you a satisfactory price, for your filing, you felt at liberty to sell?

A. I would be in the mind to sell, yes. But it was all in Mr. McKinley's hands.

Q. Well, you felt that you morally owed him a fee

(Testimony of Thomas R. Wilson.)

out of any proceeds, for locating you?

A. Naturally.

Q. Did you ever make a bargain with him that you were going to sell to him, before you made final proof?

A. No, I don't think—I can't recall it now.

Q. Or to sell to anybody else?

A. No, not that I know of.

Q. When did he first speak to you about raising the money by mortgage, if you recall, to make the final proof?

A. Quite a long time ago—I can't recall now just exactly when he did speak to me about it.

Q. But it was before, a couple of weeks before the final proof, was it not? When it was advertised,—or about that time?

A. Well, I judge it would be about that time, but I would not say for sure.

Q. Well, you relied upon him to raise that money by way of mortgage or otherwise, for paying the Government, did you not?

A. The whole thing was right in his hands; yes.

Q. For your benefit?

A. For my benefit, to see what I would get out of it.

Q. Now, have you any recollection when the first talk **[278—110]** was had between you and Mr. McKinley in regard to selling this land?

A. No, I have not.

Q. You are pretty confident that the papers for the sale were made out here in Portland?

(Testimony of Thomas R. Wilson.)

A. I thought they were, yes. I don't know for sure.

Q. You have no recollection of meeting Kribs, you say, until a long time afterwards?

A. It was some six or eight months, possibly, after, I met Mr. Kribs in Portland. I don't know the date exactly.

Q. Had you ever heard of a man by the name of C. A. Smith at that time?

A. Not at that time, no.

Q. When did you first hear of him?

A. Oh, within the last year or two.

Q. Do you, or do you not recall whether Mr. McKinley told you, shortly before the final proof, that arrangements had been made with Mr. Fred A. Kribs, or Mr. Kribs, to furnish the money to make the final proof?

A. I can't recall that. I don't recall that.

Q. Now, you say you met Mr. Kribs, a year later or so, in Portland, on the occasion when a special agent was here. Did you have any talk with Mr. Kribs about this matter at that time?

A. I don't remember any land conversation at all with Mr. Kribs.

Q. Do you remember the name of the special agent that you met that day? **[279—111]**

A. No, sir.

Q. At the hotel? A. No, sir.

Q. Was his name Loomis?

A. I don't remember.

Q. What sort of a looking man was he?

A. Well, he was sitting down when I went in. I

(Testimony of Thomas R. Wilson.)

could not remember—ten years ago.

Q. Did he have a typewriter in the room?

A. No, sir.

Q. No young man acting as stenographer or typewriter? A. No, sir.

Q. How long have you lived in Portland?

A. I came here the first time 20 years ago.

Q. You are now in the employ of the State?

A. Yes, sir.

Q. State of Oregon? A. Yes, sir.

Q. As a bookkeeper at the State Penitentiary?

A. Yes, sir.

Q. How long have you been so employed?

A. Seven years the first day of this month.

Q. That is all.

Redirect Examination.

Q. Do you recall whether or not when Mr. McKinley directed you to go before the special agent, that he mentioned the land involved, whether or not it was the land—the timber claim? A. Yes.

Q. He did? A. Yes.

Q. Did you give some affidavits in some other claims in which you were interested at one time? **[280—112]**

A. I think probably I did, yes.

Q. Do you remember distinctly that the affidavit that you are talking about now is not one of those?

A. Yes, sir.

Q. You do?

A. The reason why, there was a contest on, I believe, somewhere about that time, or going to be—I don't know what. There was going to be a con-

(Testimony of Thomas R. Wilson.)

test on some of those claims, or something out there.

Q. Some of which claims?

A. Some of those claims that I made this affidavit for.

Q. This timber land? A. Yes.

Q. Were the other claims in which you were interested, timber claims? A. Yes, sir.

Q. Well, did you take them under the Timber and Stone Act or under the Homestead Act?

A. Homestead.

Q. They were really homestead claims?

A. Yes, sir.

Mr. LIND.—What has that to do with this?

Mr. McCOURT.—It was an indication in your question that he might have given an affidavit to Loomis instead of Stratford in this matter. I want to make it definite that it was this matter.

Mr. LIND.—You will pardon me. I have not seen that.

Mr. McCOURT.—It has his signature on it.

Mr. LIND.—Stratford?

Mr. McCOURT.—Yes.

Mr. LIND.—Oh, well, that is all.

Q. Now, you say you took that claim up for your benefit? What benefit were you going to have? **[281—113]**

A. Well, I was guaranteed so much—$75.00 or $100, and expenses to start in with, up to the time it went into litigation, why, the balance was all off. At the time I took it up, why, I took it up for what was in it at the time.

(Testimony of Thomas R. Wilson.)

Q. And to whom were you going to turn the title?

A. Well, I didn't know anything about that. McKinley had that in charge.

Q. It was to be turned to whoever he directed?

A. Yes.

Mr. LIND.—Do you refer to some other entry or the entry in suit?

Mr. McCOURT.—No. I refer to this one right here.

Q. You refer to this same particular entry, do you not?

A. Yes, sir, that same particular one.

Q. Now, you say that McKinley gave you the description. How did he give it to you?

A. I don't remember that—whether it was on a piece of paper, or told me about it—I don't remember where it was— I don't remember how he gave it to me. I don't remember.

Q. Did you read over the instrument you signed at Roseburg, when you filed?

A. Yes, I must have.

Q. What? A. I must have, yes.

Q. Do you have any recollection of reading it?

A. I must have done it at Roseburg, because it was before the receiver there, I guess. I must have read it, but I don't recall reading it.

Q. No? A. No. **[282—114]**

Q. Well, how is it that you recall that you did not read that affidavit?

A. Because the way it was put up to me.

Q. Now, had you ever seen that man that took

(Testimony of Thomas R. Wilson.)

the affidavit, before you stepped into the room?

A. No, sir, not that I know of.

Q. Did you ever spend any money in connection with that timber claim of any kind?

A. Not directly for the timber claim, no. I spent money of my own, in going to Roseburg a couple of times but not for the timber claim.

Q. For your fare? A. No, incidentally.

Q. For cigars? A. Yes.

Q. And such? A. Yes.

Q. Did you pay any money of any kind in connection with the claim? A. No, sir.

Q. At whose direction did you make the deed and mortgage, if you ever did make them?

Mr. LIND.—Wait a moment. I object to counsel using the word "direct."

A. It must have been—

Mr. McCOURT.—If anybody.

COURT.—You used the word direct. Probably request would be better.

Mr. McCOURT.—It was direct, as a matter of fact.

A. I think it was at the direction of McKinley.

Q. Did you ever pay any attention whatever to the matter after the day that you made the proof except as your attention was called to it by McKinley that one time? **[283—115]**

A. No, I don't believe I did.

Mr. McCOURT.—That is all.

Recross-examination.

Q. Well, now, as I understand you, Mr. Wilson, the understanding between you and McKinley was,

(Testimony of Thomas R. Wilson.)

he described the land to you, assured you that was a good piece of timber land, and that if you entered it there would surely be $100, and if it could be sold for more, why, there might be a bigger thing?

A. $75.00 or $100.00 at least, and expenses, if I would take it up, yes.

Q. And you understood that after you made the final proof, he might put it on the market and negotiate the sale of it?

A. At that time, yes.

Q. That was your understanding?

A. At that time, at the time the filing was made, yes.

Q. And then after you had made your final proof, you concluded to sell it? A. Well—

Q. I mean to deed it?

A. Well, that was right in his hands. He could do as he liked with it. If he got a bigger price, all right. I got my fee. But the understanding when we took it up first, I would get my $75.00 or $100.00, whatever the matter might be, and expenses at the time. And he was to turn it.

Q. How? A. He was to turn it over.

Q. Turn it over to what? **[284—116]**

A. Turn it over, make some money out of it—turn the deal over.

Q. For you or for himself?

A. For himself. And if he got more money, probably I would get some more out of it.

Q. You felt if you had a good offer, you felt at

(Testimony of Thomas R. Wilson.)

perfect liberty to sell it yourself, did you not, at any time?

A. I never thought that, now.

Q. How?

A. I never thought that myself. I left it all to him.

Q. Yes, I know. But there was nothing in your understanding to prevent you from making a sale of that claim yourself, and compensating him for his location, was there?

A. Well, I think there was. I didn't have the money to take the claim up, in the first place myself. And it would have to go through him before I could do it.

Q. So you left the management to him?

A. All entirely, yes.

Q. But nevertheless you did not bargain to sell it to him?

A. Not at that time, no.

Q. When did you have that understanding with him?

A. Well, that was later than that. It was somewhat later that we—it must have been after I made the final proof, that he came to me and said that he could sell it.

Q. It was after you made the final proof?

A. I think so.

Q. That he went to you? A. Yes. [285—117]

Redirect Examination.

Q. Did you or did you not understand the papers

(Testimony of Thomas R. Wilson.)

that McKinley brought you to sign to be in furtherance of the original arrangement that you had made with him?

Mr. LIND.—Now, this is objected to, your Honor. There should be an end to this.

Mr. McCOURT.—I think the matter is clear enough myself, but the trouble with these cases is this—

COURT.—Let him answer it.

(Question read.)

A. Yes. I think that ended it, I guess.

Q. That ended the original transaction?

A. Yes.

Q. Did you ever try to borrow any money from anybody else? A. No.

Q. Did you ever try to sell the land to anybody else? A. No.

Mr. McCOURT.—That is all.

Recross-examination.

Q. You and McKinley were personally friendly?

A. We were.

Q. Rather chums?

A. In a way, yes. Yes, we were.

Q. You had implicit confidence in him handling that claim for you to the best advantage?

A. Yes.

Q. For your benefit? A. Yes.

Q. And that is why you relied on him, was it?

A. I relied on McKinley, yes. **[286—118]**

Redirect Examination.

Q. Did you about this same time have some simi-

(Testimony of Thomas R. Wilson.)

lar transactions with McKinley?

A. It was later on.

Mr. LIND.—That is objected to as incompetent and irrelevant unless it pertains to some matter in suit, and not proper redirect.

Mr. McCOURT.—I will not press that on account of the witness himself. I do not think it is necessary to press it.

COURT.—Very well.

Mr. McCOURT.—That is all.

Witness excused. **[287—119]**

[Testimony of Ed Finley, for the Government.]

ED FINLEY, a witness called on behalf of the government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Finley?

A. I live in Polk County, Oregon.

Q. How long have you lived there?

A. About 35 years.

Q. How far do you live from Salem?

A. About four miles—something like that.

COURT.—Please speak a little louder.

A. About four miles, I think, by the road.

Q. Were you living there in 1900?

A. Yes, sir.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Dan W. Tarpley? A. Yes, sir.

COURT.—Speak up.

(Testimony of Ed Finley.)

A. Yes, sir.

Q. S. A. D. Puter?

A. I know him when I see him; that is all; not personally acquainted with him.

Q. What business were you engaged in in January and February, 1900? A. Farming.

Q. I will ask you whether or not you made a filing upon a timber claim in Linn County—

A. Yes, sir.

Q. —in that—in January or February, 1900?

A. Yes, sir, as near as I remember.

Q. State to the Court the circumstances leading up to making the filing and surrounding the same.

[288—120]

A. Well, a man by the name of Hughes came to me and asked if I wanted to—

Q. Louder please.

A. A man by the name of Hughes came to me one night and asked if I wanted to take up a timber claim. I told him I didn't know. Then he said that Mr. McKinley was having persons to file on some timber claims—make filings. So I seen Mr. McKinley and I asked him what the proposition was and he stated the conditions. Stated that—

COURT.—Speak a little louder, please. I don't think counsel can hear you very distinctly.

Q. Go ahead.

A. Well, he said that they would advance their money for the expenses—

COURT.—Louder please.

A. Said they would pay the expenses, all ex-

(Testimony of Ed Finley.)

penses connected with acquiring the land or the filing and going to and from Salem there, and also there would be $75 or $100 in it besides; and we was to give a note and secure it by a mortgage on the land.

Q. Who was this man Hughes?

A. Well, he was a party that lived around Salem there.

Q. A dark moustached fellow that used to play poker a good deal? A. I think so.

Mr. LIND.—I object to that and ask that that be stricken out.

Mr. McCOURT.—Well, that is his chief business.

COURT.—You can strike that out. There is enough to inquire into in this case without inquiring into the personal habits of all these people.

Q. Well, now, what did you do after you talked to McKinley? **[289—121]**

A. What did we do?

Q. Yes.

A. Why, we was waiting on the train that night with the rest. Some other persons going up there to file on the train, and just waited there until it was time to go, and went.

Q. Went where? A. Roseburg

Q. That was the same day you talked with McKinley? A. Yes, sir.

Q. How many of you went along?

A. Well, there was seven or eight that was going—that was there at that time that I knew.

(Testimony of Ed Finley.)

Q. Will you please name those you knew and can remember?

A. Well, I think there was my brother, Sel Finley, and Frank Starr, Green, Charlie Barr, Charlie Burley—

Mr. LIND.—I can't hear.

Mr. McCOURT.—Charlie Burley.

A. Yes. I believe Jay Phillips—I believe, I am not sure. There may have been some others, but I can't recall now who they were.

Q. Now, what was Charlie Burley doing at that time?

A. Well, he was staying out there in the country with my—at my father's place, I think, at that time.

Q. And Jay Phillips, what was his occupation?

A. I think he was tending bar.

Q. And Clel Nash—what did Clel do then?

Mr. LIND.—Wait a moment. Is he a party to this suit?

Mr. McCOURT.—No, he is not, but he is one of the entrymen.

Mr. LIND.—I object as irrelevant.

COURT.—One of the entrymen named in this list.

A. Shall I answer the question? **[290—122]**

COURT.—Yes.

A. What was he doing?

Q. Yes.

A. I think he was tending bar too.

Q. And Frank Starr—what was his business?

A. I couldn't tell you. Don't know that he had any.

(Testimony of Ed Finley.)

Q. Didn't have any, did he?

A. I guess not.

Q. Charlie Barr—what was he doing?

A. I think he was a farmer. I don't know. Either farming or working on a farm or in a hop-yard or something.

Q. Working on a hop ranch for Dug Minto, wasn't he?

A. I think that is what he was doing.

Q. Well, after you filed at—did you all file at the same time up there? A. I think so.

Q. Well, what happened after you got through making filing?

A. Well, we—as soon as—as soon as we got through filing I went out and signed a note and mortgage.

Q. Well, didn't you make more than one trip up to Roseburg?

A. No, sir, I don't think so. I don't think that I did. Not that I remember of.

Q. Do you remember what month that was that you went up there? A. No, sir, I do not.

Q. Do you know where this land is that you filed on?

A. Well, I think that I have been somewhere near it. I was up in the mountains there above Sweet Home and they told me that was the land. That is all I know about it.

Q. When was that? A. When was it?

Q. Yes—with relation to the time you filed or proved up. **[291—123]**

A. Well, it was a few days before we filed—be-

(Testimony of Ed Finley.)

fore we filed on the land.

Q. Now, don't you recall that you were up to Roseburg twice?

A. Well, I have no recollection of transacting any business in connection with this—at the Roseburg office—Land Office, in this case.

Q. Well, at this time that you refer to, where was—where did you go to sign this note and mortgage that you speak of?

A. Well, it was in a hall, I think, leading right out of the Land Office.

Q. Who was there?

A. There was—well, I don't remember exactly who was there. I don't recall any names at present.

Q Was McKinley there?

A. When we signed the paper?

Q. Yes.

A. Well, I think probably he was and Tarpley, and I don't remember who all. There was several right there in the room at that time. They was all signing as soon as we could and a man stepping away—

Q. How is that?

A. They was several persons there at the time that we was signing. They was signing them right along in regulation; as soon as one signed they would step aside and somebody else would sign.

Q. That is, when they signed the proof or the deed or mortgage?

A. Supposed to be signing the mortgages.

Q. In the Land Office?

A. No, it wasn't in the Land Office; not right in

(Testimony of Ed Finley.)

the Land Office. If I remember right, it was kind of in a hallway there, somewhere close to the office. **[292—124]**

Q. Now, how soon did you go into that room after you had made your proof?

A. To sign these papers? Why just as soon as we got through in the Land Office, I think. We stepped right in there and signed the papers.

Q. Now, who was doing the writing there?

A. I could not tell you.

Q. Did you know the parties? A. Sir?

Q. Did you know the parties that were making out the deeds *r* making out the mortgages?

A. No, sir.

Q. Well, what other—what other business occurred there at that time after you got your mortgage signed?

A. Well, that is all that I remember of, except that night they came around and gave me $75.

Q. Give anybody else of the party $75?

A. Yes, sir.

Q. Who? A. Charlie Burley.

Q. He was with you? A. Yes, sir.

Q. Did you notice any of the others that had been signing mortgages there getting $75?

A. No, sir.

Q. Just you and Burley was all that you know?

A. Yes, sir.

Q. Now then, after that, did you sign any other paper? A. At that time?

Q. Or did you go home?

A. Oh, no, I came home.

(Testimony of Ed Finley.)

Q. Yes.

A. Yes, I remember of signing some papers for Mr. McKinley at Salem, at the Willamette Hotel, but I do not know the nature of what it was, now; and also signing a—signing a [293—125] deed some time after.

Q. How long after it was it you signed the deed?

A. Well, I couldn't say now, but it must have been—it occurs to me that it was three or four months or more. Might have been longer; I would not be positive on that.

Q. Well, the deed shows it was four days after; how about that?

A. I don't remember of signing—I know I signed one deed. I remember that distinctly. I don't know that I signed any other note or deed, or the mortgage and the note; but for any other deed, I don't remember of signing it, except the one that I say several—a long while afterward.

Q. Was your wife up at Roseburg?

A. No, sir.

Q. At that time or any other time?

A. No, sir.

Q. Do you know John H. Shupe?

A. No, sir.

Q. A lawyer that used to be in Roseburg?

A. I don't remember.

Q. So your wife wasn't there that date that you made proof? A. Yes, sir.

Q. Now, in connection with this entry, after you concluded to take it, did you ever go to look at this

(Testimony of Ed Finley.)

land? A. How is that?

Q. Did you ever go to look at the land that you were going to take after you concluded to make the entry?

A. Well, yes, before I filed on the land I went out there.

Q. Who went along in that party?

A. Well, I remember Frank Starr and Sel Finley and Jay Phillips and Charlie Barr—about all I remember of.

Q. How did you get there?

A. Well, we went to—as far as Lebanon, I think, on the train, and then went from there to Sweet Home, and stayed all night there; and then went on up in the mountains 15 **[294—126]** or 16 miles with a buggy—buggies—and then we started out from the place where we stayed all night there, afoot.

Q. Where did you stay all night?

A. I think it was Malley's—was the name of the place, if I remember right. I don't know the name, only just what I heard.

Q. Now, hadn't you been to Roseburg once in connection with the entry before you went out there to look at the land?

A. Stopped in Roseburg—let's see, I don't—

Q. Hadn't? A. I don't remember.

Q. Anyhow, who—or what did it cost you to go out there to look at that land—to go to Roseburg?

A. I couldn't say.

Q. Did you pay it? A. No, sir.

(Testimony of Ed Finley.)

Q. Who did?

A. Well, I understood that McKinley did. I don't know who did, but the way was paid. Nobody asked me for anything.

Q. Did you ever pay any money in connection with the entry, whatever? A. No, sir.

Mr. McCOURT.—Now, in connection with this matter, I offer the usual mortgage and deed.

COURT.—Made to the same parties?

Mr. McCOURT.—Yes, made to the same party.

Mortgage marked "U. S. Exhibit 60."

Deed marked "U. S. Exhibit 61."

Q. Now, did you know—did you talk to Mr. Burley about it? You and he discussed this matter?

A. Yes, sir.

Q. Of making these mortgages? Do you know whether his was made in the same manner as yours was?

Mr. LIND.—That is objected to as calling for the **[295—127]** witness' conclusion.

COURT.—Unless he knows of his own knowledge.

Mr. McCOURT.—I asked him if he knows.

A. What is the question please?

Q. I ask if you knew whether Mr. Burley's entry was made in the same manner and under the same conditions as yours, with Mr. McKinley?

Mr. UELAND.—Isn't that too general? It makes the question cover a large detail of matter.

COURT.—I think it should be more definite.

Q. Was Mr. Burley present when you and Mr. McKinley were talking over the matter, and were

(Testimony of Ed Finley.)

you present when the arrangement was made with Burley by McKinley, if it was made?

A. No, sir. I think Mr. McKinley kind of set to one side and talked with both of us. I don't think anybody overheard the conversation.

Q. I mean, did you hear the conversation of McKinley with Burley?

A. No, sir, I did not.

Q. Nor did Burley hear the conversation with you? A. I think not.

Q. In the different trips that you made in connection with it, state whether or not Burley was always one of the party? A. I think so.

Q. Did you ever talk—did Mr. Burley ever tell you what his arrangement was?

Mr. UELAND.—That is hearsay.

Mr. McCOURT.—No, that is not hearsay. Mr. Burley is a party.

COURT.—Party to this suit?

Mr. McCOURT—Yes, a party in this suit. **[296—128]**

Mr. UELAND.—May it please the Court, the defendants that we represent object to this as evidence against them.

Mr. McCOURT.—I will confine it to Mr. Burley, except, I suppose, I will have to show that these defendants had knowledge, in some other manner. The fact that Mr. Burley might have admitted it, would not be notice to them.

A. What is the question, please?

Mr. LIND.—I think, your Honor, under the cir-

(Testimony of Ed Finley.)

cumstances of this case—here is a charge of conspiracy against the defendants that we represent. Now, I can't see how the conspiracy charged against us can be construed to be affected through defendants not parties to the conspiracy charged; nor how admissions back and forth between them—it is hearsay as to them, and certainly incompetent and hearsay as to us.

COURT.—Well, I suppose the government has to proceed to show fraud in the first place and then show notice of it. Burley is a party to this suit, as I understand, one of the defendants. Whatever admission he made is competent against him whether against anyone else.

Mr. LIND.—Yes, for that purpose, your Honor.

Q. (Read.)

A. No, I don't believe that he did.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Finley, what is your age?

A. Forty years old.

Q. Have you a family? A. Yes, sir.

Q. How long have you been married?

A. About 13 years.

Q. Children? A. No, sir.

Q. At the time that you filed on the land in controversy **[297—129]** in this suit, were you living on your farm? A. Yes, sir.

Q. Did you own the farm? A. Yes, sir

Q. How far is that away from—how far did you live from the land that you located—about?

(Testimony of Ed Finley.)

A. I couldn't say; I don't remember I couldn't—

Q. Well, approximately?

A. Probably 150 miles—something like that.

Q. How?

A. Probably150 miles—I couldn't say.

Q. How long had you known Mr. McKinley before you made this filing?

A. Well, I hadn't known him personally for—only at the time—I don't believe I have ever talked to him much, only just before I—about filing. I had seen him around Salem different times. Knew it was McKinley.

Q. What was his business?

A. Well, I understood that he was a land locator.

Q. That he located people that wanted claims?

A. Yes.

Q. Did I understand you to say that you called him up after Hughes had talked to you?

A. Yes, when I met him I spoke to him.

Q. Spoke to him about locating a claim for you?

A. Yes, sir.

Q. Did he say he would? A. Yes, sir.

Q. Was anything said at that time about arrangements for money to pay for the claim, or mortgage, or was that discussed later?

A. No, it was discussed then. He said that the expenses, all the expenses, would be paid in regard to acquiring the land. **[298—130]**

Q. Did he say that he would advance the money —that he would put up the money for the expenses?

(Testimony of Ed Finley.)

A. Yes, sir.

Q. Did he say how much the mortgage loan would be for?

A. I don't think he did. I don't remember, at that time.

Q. Did he later, or did he tell you what his—

A. No, I don't think he did later.

Q. Did he tell you what his locating fee was? What his fees for locating were?

A. No, I don't remember of him saying anything in regard to that.

Q. Well, as a matter of fact, didn't he tell you that his fee for locating was $100?

A. Well, he may have possibly said that.

Q. And that the mortgage would have to be large enough to cover the locating fee and the Land Office fees and to give you $75 or $100?

A. Well, that was about the substance of the conversation as near as I can remember.

Q. Then, wasn't it understood that, if afterwards the land was sold for more, you and he would have the benefit of it?

A. Well, there was nothing said in regard to selling the land.

Q. At that time? A. No, sir.

Q. When was the first talk with McKinley about selling the land?

A. I never had any talk with him about selling.

Q. Well, I mean when you signed the deed. When did you—wasn't there any talk about selling the land when you signed the deed?

A. No, sir. **[299—131]**

(Testimony of Ed Finley.)

Q. How did you come to sign it?

A. Well, they just came out, Mr. Tarpley and Mr. Puter, and asked if I wouldn't sign the deed, and I supposed that the mortgage had become delinquent, so I just merely signed it.

COURT.—Who did you say came out there?

A. Mr. Tarpley and Mr. Puter.

COURT.—Came out to your farm?

A. Yes, sir, my father's place. I was living with my father.

COURT.—That is where the deed was signed?

A. Yes, sir.

Redirect Examination.

Q. Isn't it a fact that you understood that deed, at the time, to be a part of the original arrangement you had with McKinley?

A. How is that question, please?

Q. Didn't you understand that deed to be a part, and the end of the original arrangement you had made with McKinley? A. Yes, I think I did.

Q. Did you get any other or more money at that time than you had already received?

A. No, sir.

Q. Did you ask for any? A. No, sir.

Q. You spoke—I ask a matter that I forgot—you spoke of signing an instrument or paper in the Willamette Hotel afterwards. What was that, do you know?

A. No, sir, I don't know the nature of it at all.

Q. Were you ever asked to sign an affidavit before a government agent in regard to this transaction?

A. Yes, sir.

(Testimony of Ed Finley.)

Q. When was that?

A. Well, I don't remember when it was; couldn't —have no recollection in regard to it at all. [300—132]

Q. And where was it?

A. Well, they said that the agent was there in Salem at the Willamette Hotel.

Q. Who told you that? A. Mr. McKinley.

Q. Did you sign any affidavit? A. No, sir.

Recross-examination.

Q. One moment. Had Mr. McKinley ever said anything to you in any conversation that you had with him, about deeding this land to anybody before you made the final proof? A. No, sir.

Q. When Puter and Tarpley came up to your father's place where you were living and working, to get this deed, didn't they pay you $25 for that deed? A. No, sir.

Q. They did not? A. No, sir.

Q. What made you give it? Why did you sign the deed when they came there?

A. Well, sir, I couldn't tell you, only as a matter of courtesy, I suppose. I supposed that I had no more interest in the land.

Q. Why did you think you had no more interest in the land?

A. Well, I supposed that the mortgage had run its length of time and had taken the land.

Q. You didn't have the money to pay the mortgage? A. No, sir.

Q. And you didn't see your way clear to raise it?

A. No, sir.

(Testimony of Ed Finley.)

Q. So you were willing to let it go?

A. Yes, sir.

Redirect Examination.

Q. Did you not understand that that mortgage was merely an **[301—133]** instrument by which the real nature of the transaction would be covered up?

A. Why, I didn't know—I didn't understand the nature of it at all. I might have had an opinion or something of that kind.

Q. Did you understand that that was the method by which the title was to be transferred from you to McKinley or whoever was to get the title?

Mr. LIND.—That is objected to as calling for a conclusion.

Mr. McCOURT.—Calling for an understanding.

Mr. LIND.—Well, an understanding, and as my associate suggests, an understanding at that time is utterly immaterial; at the time he made the deed.

COURT.—He asked about the original understanding with McKinley.

Q. Did you understand*ing* at the time McKinley approached you about taking this timber claim, that that mortgage you were to execute was the method by which the title was to be transferred from you to the person to whom he wished it to go? A. No, sir.

Q. You did not?

A. Didn't understand it.

Q. What did you understand?

A. I understood it just the same way that you would give a mortgage of any kind.

Q. What?

(Testimony of Ed Finley.)

A. Just the same as you would, any common mortgage.

Q. Any common mortgage? A. Yes, sir.

Q. When did you discover that it was something else? **[302—134]**

A. Well, I don't know as I did.

Q. How is that?

A. I don't know as I did discover that it was anything else.

Q. How was it you signed a deed three days after, deeding the land to an entirely different party than you had given the mortgage?

A. If I signed any deed at that time, I didn't know it; not three days after. I supposed I signed the deed, it was this deed that I spoke of, several months after. I don't remember of signing only one deed, and if I did it, I did it unbeknowing.

Mr. UELAND.—Mr. District Attorney, if I may be permitted to call your attention to it, the proof will show that it was a mistake in the first Finley deed, and it was corrected by a later deed.

Mr. McCOURT.—Well, I will find out.

Mr. UELAND.—I simply call your attention, that is the case. A mistake in the first deed, and the correction later on.

Mr. McCOURT.—Have you that second deed?

Mr. UELAND.—I will see.

Q. I will ask who came there. Who did you say came out and got the deed?

A. Tarpley and Mr. Puter.

Q. Did they ever come to your place but one time?

A. That is all.

(Testimony of Ed Finley.)

Q. That is the time you understood you were signing a deed? A. Yes, sir.

Q. And that was—did your wife ever sign any other document than that one time when they came out there?

A. No, sir, not that I know of. **[303—135]**

Q. Do you recall ever taking your wife to the Willamette Hotel? A. How is that?

Q. Do you ever recall taking your wife to the Willamette Hotel to sign any paper before McKinley?

A. Yes, she went with me when I signed the paper.

Q. At the Willamette Hotel? A. Yes, sir.

Q. Now, that was the correction deed. Did you understand that was a deed? A. No, sir.

Recross-examination.

Q. Had you ever seen Puter until that day when he called at your farm?

A. Yes, sir, I had seen him at Roseburg.

Q. When you made your final proof?

A. Yes, sir.

Q. And made the mortgage? A. Yes, sir.

Q. Had you seen him before that time?

A. No, sir.

Witness excused. **[304—136]**

[Testimony of Basil H. Wagner, for the Government.]

BASIL H. WAGNER, a witness called on behalf of the Government, being first duly sworn by the Court, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live? A. Salem, Oregon.

Q. How long have you lived there?

A. Nearly 30 years.

Q. All your life? A. Practically, yes.

Q. Do you know Horace G. McKinley?

A. I do.

Q. How long have you known him?

A. 15 years.

Q. Mr. Dan W. Tarpley—you know him?

A. I do.

Q. S. A. D. Puter? A. Yes, sir.

Q. How long have you known Puter and Tarpley?

A. About the—well, I have known Mr. Puter about the same time I have known Mr. McKinley.

Q. What is your business, Mr. Wagner?

A. I am a clerk.

Q. Prior to the year 1900 what had you been doing? A. I had been working in Seattle.

Q. Did you ever work in the office of the Clerk of the School Land Board? A. I did.

Q. In Salem? A. Yes.

Q. How lond did your work there?

A. About four years.

Q. And when—what years were those?

(Testimony of Basil H. Wagner.)

A. From 1896 to 1899.

Q. Do you recall the incident, Mr. Wagner, of having taken **[305—137]** a timber claim up in Linn County in January, 1900? A. I do.

Q. Will you kindly state the circumstances leading up to the taking of that timber claim and surrounding the transaction?

Mr. LIND.—That is objected to as irrelevant in this case, and incompetent for the purpose of establishing any of the matters charged in this complaint against the defendants.

Mr. McCOURT.—It is one of the 57 entries.

COURT.—Very well. It will be admitted subject to the objection.

Q. (Read.)

A. Mr. McKinley came to me about January of 0, and told me that there would be an opportunity under the Timber and the Stone Act to take a claim and wanted to know—wished to know if I would be willing to go with him, which I did, to Roseburg. I filed. And after that I went to Brownsville, I think it was, and from there to Malley's place; then back to Salem and then after a short time, I went back to Malley's place near Foster, Oregon, and cut a trail—helped cut a trail, with Mr. Tarpley, John Thompson and William Malley. The time consumed in the cutting of the trail was about eleven days. Then, accompanying these gentlemen—or Mr. Tarpley in particular—back and forth from Brownsville to Malley's place, I returned home in Salem, Oregon. That concluded the transaction with the exception that I was paid in Roseburg for this timber

(Testimony of Basil H. Wagner.)

claim, by Mr. McKinley, the sum of $100. Then after that I returned home to Salem, Oregon, and there remained for quite a while.

Q. Now, what relation did that $100 that you received at Roseburg, have to the original agreement which you had with Mr. McKinley, if you had any prior to making the **[306—138]** filing?

A. The agreement that I had with Mr. McKinley, that there would be a certain profit accrue pending the sale of these lands, or of this claim.

Q. What was that certain sum?

A. The circumstances, as I said.

Q. Well, answer me. What was that certain sum?

A. That the profits might accrue.

Q. What was the certain sum that McKinley told you you would get?

A. There was no stipulated sum in my regard—possibly $100.

Q. At least as much? A. At least $100.

Q. Sure it was $100? A. I think so.

Q. Or $75? A. I think it was $100.

Q. Now, did he pay you the $100 there when you got through proving up? A. He did.

Q. In what kind of money? A. Currency.

Q. All—the whole $100? A. Gold.

Q. The whole $100?

A. With the exception of $30.

Q. What was the matter with that?

A. That was taken out for expenses.

Q. Now, were you all this time cutting this trail on your own claim up there?

(Testimony of Basil H. Wagner.)

A. Not all the time.

Q. Whose claims were you cutting them on?

A. Well, I don't know.

Q. Who were you working for?

A. I was working for Mr. Malley.

Q. Who was Mr. Malley working for? [307—139]

A. Mr. Malley was working for Mr. McKinley.

Q. Who sent you up there?

A. Mr. Tarpley.

Q. Who was he working for on that?

A. Mr. Malley.

Q. What was Mr. Tarpley doing up there?

A. He was locating.

Q. Who did he locate while you were there?

A. I think he located Harry Barr, Jay S. Phillips—the time has been so long that I have forgotten, about—ten years ago, nearly.

Q. Well, he located more than three people, didn't he? A. I believe so.

Q. About how many were there all together?

A. Mr. Brandenbury—I don't know; probably a dozen.

Q. Give me the approximate number.

A. Probably a dozen.

Q. During the eleven days that you were there?

A. No, after that—after cutting the trail.

Q. Did you remain up there at Malley's?

A. Yes, for a while; I came back to Salem immediately after cutting the trail.

Q. And when—how long did you remain in Salem before you went up on the claim?

(Testimony of Basil H. Wagner.)

A. I think it was about ten weeks.

Q. Now then, at the time Mr. McKinley gave you that $100 less $30, did you execute any sort of instrument? A. I did.

Q. What? A. A mortgage and a note.

Q. In whose favor?

A. The note was in Mr. Krib's favor.

Q. For how much money? A. $600.

Q. And was Kribs there?

A. He was. **[308—140]**

Q. Any other instrument executed there at that time? A. A mortgage.

Q. Securing the note you mentioned?

A. Yes, sir.

Q. Yes. That ran in favor of Mr. Kribs, too?

A. I believe it did. I have forgotten. I believe it did.

Q. Is that all you did? Is that all the instruments you executed? A. A deed.

Q. Who was that to? A. To John A. Willd.

Q. Who was he? A. I don't know.

Q. What was you making a deed to him for?

A. Sir?

Q. Why were you making a deed to him at the same time?

A. That was the purchaser of the land.

Q. Oh, he bought the land on the same day you mortgaged it?

A. No, it was about four or five days after that, as near as I can remember.

Q. You made them both there in Roseburg, didn't you? Both the deed and the mortgage?

(Testimony of Basil H. Wagner.)

A. I think I—let's see. No, my deed, I think, was made in Salem. No, it was made in Roseburg. It was made in Roseburg.

Q. Well, you didn't stay in Roseburg three or four days, did you, after you made proof?

A. No.

Q. The fact of the matter was, the deed and the mortgage were made at the same time—the same day?

A. The deed and mortgage?

Q. Yes. Is that so?

A. No, mine was made, I think, the 23d of April—my deed.

Q. I know it was dated the 23d of April.

A. Yes. **[309—141]**

Q. But isn't it a fact that the deed and mortgage were made the same day, there in Roseburg?

A. I have forgotten.

Q. Who was present when the deed was made?

A. Mr. Tarpley and Mr. Puter.

Q. Anybody else? A. I can't recall.

Q. Mr. Fred Kribs there? A. No.

Q Oh, he wasn't there. What was the purpose of making the deed so shortly after the mortgage, or right at the time?

A. In regard to sell this land.

Q. Oh, yes, let's hear about that.

A. Well, I understood that there was a certain amount of profit to accrue to each entryman that had filed and completed entry.

Q. Well, what was that certain amount?

A. Whatever profits might accrue out of the sale of these lands.

(Testimony of Basil H. Wagner.)

Q. Well, they were sold right there. Why didn't you take your profits? What were you giving a mortgage for? A. No money.

Q. What? A. Had no money at the time.

Q. Who didn't? A. Me.

Q. Well, you made your sale right there. Why didn't you take your money?

A. I had an opportunity to hold these lands—

Q. Well, what did you deed them for if you were going to hold them?

A. — or deed them. I wished to deed this on account of not wishing to keep them.

Q. What did you get for not keeping them? **[310—142]**

A. Nothing.

Q. Now, Mr. Wagner, if you will just confine yourself to the real facts in this transaction, and not try to be dramatic here, you and I will get along a whole lot better. I call your attention to what appears to be a warranty deed, executed at Roseburg on the 19th day of April, 1900, purporting to convey the lands included in your entry for $1.00 to John A. Willd.

Mr. UELAND.—I want, in making that statement that it purports to be executed at Roseburg—

Mr. McCOURT.—Well, I will qualify that.

Q. I will ask you to examine the same and state whether or not that is your signature there as the grantor? A. That is right.

Q. Who were the witnesses?

A. Frederick A. Kribs, John H. Shupe.

Q. Does that refresh your memory now as to

(Testimony of Basil H. Wagner.)

whether or not Mr. Kribs was present?

A. I don't remember him being present at the time.

Mr. McCOURT.—I will have to introduce it a little later unless you will waive the formality of proving it.

Mr. LIND.—All right.

Mr. McCOURT.—I offer it in evidence to show the date at which it was given and to show the fact that Mr. Kribs apparently was present at the time.

Marked "U. S. Exhibit 62."

Q. Did you know who John H. Shupe was?

A. He was an attorney.

Q. Where did he live? A. Roseburg.

Q. Did you ever execute an instrument before him at any place except Roseburg?

A. None at all. **[311—143]**

Q. Do you recall that your proof was made upon the 18th day of April, 1900?

A. I think it was along about that time, yes.

Q. Now, this man John A. Willd, where did he—was he a friend of yours?

A. I never met the gentleman.

Q. Do you know where he lived or what his business was? A. No.

Q. Were you—or who was acting for Willd there at that time? A. Mr. Kribs, I think.

Q. Now, Mr. Wagner, after you had made proof—or rather, you say you signed a note for $600 there. Did you ever pay it?

A. I believe it was satisfied—paid.

Q. Did you pay it? A. It was paid.

(Testimony of Basil H. Wagner.)

Q. Did you pay it? A. No.

Q. Who did?

A. The deed satisfied the mortgage.

Q. Oh, yes, and you made the mortgage and the deed the same day?

A. Oh, no, it was four or five days later.

Q. Was the mortgage and the note given the same day?

A. The mortgage and the note might have been given the same day.

Q. I will ask you if that is the note?

A. That is right.

Mr. McCOURT.—I offer the note in evidence to show the date on which it was given.

Marked "U. S. Exhibit 63."

Q. Now, when you had signed that mortgage and that deed there and got your $100, less the $30 that you owed Mr. **[312—144]** McKinley, when did you—did you ever have anything more to do with that land at all, in any way? A. Nothing.

Q. When did you next hear of the entry or have your attention called to it?

A. I had received notices from the Department of the Interior, to which I paid no attention.

Q. Well, did you pay any attention to any of them? A. No.

Q. Or anybody about the entry? A. No.

Q. Did anybody ever talk to you about it afterwards? A. Yes.

Q. Who? A. Mr. Stratford.

Q. Who talked to you before Mr. Stratford did, now?

(Testimony of Basil H. Wagner.)

A. I think it was Mr. McKinley.

Q. Mr. Kribs? A. Yes.

Q. Now, where did you meet Mr. Stratford?

A. Salem, Oregon.

Q. At what place in Salem?

A. At the Willamette Hotel.

Q. Who was present?

A. Mr. Kribs and Mr. Stratford.

Q. Who else? A. No one, as I recall.

Q. What occurred, now? A. What?

Q. What occurred, now?

A. He took my deposition.

Q. Who did? A. Stratford.

Q. Was his son there?

A. I don't remember whether he was or not.

Q. Well, in taking that deposition who answered the questions? A. I did. **[313—145]**

Q. All of them? A. Practically, yes.

Q. Who answered the questions as to who you had deeded the land, and whom you had mortgaged it to?

A. Mr. Stratford.

Q. Oh, Stratford did. What was Kribs doing?

A. Well, he was doing nothing.

Q. I hand you an instrument and ask you to examine the signature thereto, the same purporting to be an affidavit made before E. D. Stratford in regard to your claim, and ask you if that is your signature?

A. It is.

Q. Is that the instrument you signed there in the presence of Stratford and Kribs? A. It is.

Q. Was McKinley there?

A. No, sir; wait just a minute.

(Testimony of Basil H. Wagner.)

Q. That is it? A. Yes.

Mr. McCOURT.—I offer the affidavit in evidence.

Mr. UELAND.—What is the purpose of this?

Mr. McCOURT.—The purpose is to offer in connection with the presence of Mr. Kribs there, and in connection with the facts in the case as they conflict with the statement of the affidavit.

Mr. UELAND.—If the purpose of this is to discredit the witness, as I understand it, we object to it as incompetent.

Mr. McCOURT.—We don't offer it to discredit the witness.

COURT.—I don't understand it is offered for the purpose of discrediting the witness at all.

Mr. UELAND.—He says offered for the purpose of showing that it isn't consistent with the testimony given on the stand. **[314—146]**

Mr. McCOURT.—No, with the facts in the case.

COURT.—With the actual facts, not what the witness now testifies.

Mr. LIND.—Wouldn't the purpose still be impeachment?

Mr. McCOURT.—It might be its effect.

Mr. LIND.—The real objection is, your Honor, that it encumbers the record. It goes in under the general objection to this class of evidence.

Mr. McCOURT.—It may be understood that the stenographer may make a copy of merely the Wagner affidavit in the record. I don't offer the balance of it, but put them all together, so they may be kept together.

Marked "U. S. Exhibit 64." **[315—147]**

(Testimony of Basil H. Wagner.)

Q. Now, after you had finished making that affidavit, what transpired?

A. Let's see. Oh, Mr. Kribs bade me good-bye and said "Go"—he went away.

Q. What did he say, now?

A. He bid me good-bye.

Q. What did he give you? A. Good will.

Q. Didn't he give you $5.00 and say, "Take this and go buy a hat?"

A. By George, I don't know; I guess he did.

Q. Do you know William J. Burns?

A. I do.

Q. Do you remember making a statement to Mr. Burns in regard to this transaction, about December, 1904? A. Yes.

Q. What? A. Yes.

Q. Did you read it—this same statement a day or two ago, when I showed it to you? A. I did.

Q. Didn't you tell me it was absolutely correct, all right?

A. Well, it might have been at the time that I thought it was. his methods being very arbitrary, you know.

Q. Yes. (Hands paper to witness.)

A. My signature

Q. You say Mr. Burns' methods were very arbitrary. Weren't you an assistant of his?

A. Not at that time.

Q. Didn't you become one immediately thereafter? A. I did.

Q. Yes. You and Burns were pretty good friends, weren't you? Now then, did you not—well, I will

(Testimony of Basil H. Wagner.)

offer this affidavit in evidence—no, I will ask the witness. I merely **[316—148]** want to call his attention to another statement. Did you not, in that affidavit that you made before Mr. Burns, on the 28th day of December, 1904, state this: "I accompanied McKinley to the United States Land Office at Roseburg, Oregon, where I made a timber entry on the SW. ¼ of Section 28, Township 41 South, Range 3 East. McKinley told me at the time I would receive $75 for making the entry"?

Mr. LIND.—Wait a moment.

Mr. McCOURT.—I merely ask if he did not make that statement in that affidavit.

Mr. LIND.—That is objected to as incompetent and the Government can't impeach a witness that it has brought in court and vouched for. If he is an adverse witness, we will concede that he can cross-examine as much as he likes to elicit the truth, but he can't impeach him.

Mr. McCOURT.—I really am not attempting—I don't mean to insinuate that the witness on the stand has lied just now. I merely want to refresh his memory. That is why I call his attention to it. Not to cast a reflection on the witness.

Mr. LIND.—Then give him an opportunity to read that statement.

Mr. McCOURT.—Certainly.

Whereupon proceedings herein were adjourned until 2 P. M. **[317—149]**

(Testimony of Basil H. Wagner.)

Portland, Oregon, April 20, 1910, 2 P. M.

BASIL H. WAGNER resumes the stand.

Direct Examination (Continued).

Q. Returning to the consideration of the affidavit, which you were starting to read at the noon adjournment, I will ask you whether or not you have read the same? A. Yes, sir.

Q. What do you say about its containing a true statement of facts as you understood them at that time? A. Yes, sir.

Q. I will ask you, then, whether or not you stated in that affidavit that McKinley told you at the time that you made the timber entry that you would receive $75 for making same?

Mr. GEARIN.—He cannot ask him what he stated in that affidavit, your Honor. He may ask him the fact.

Mr. McCOURT.—I ask him if he did not state that at that time to Mr. Burns, and in his presence?

A. Yes.

Q. Who else was present there at the time?

A. I think Mr. Puter and Mr. McKinley, if I am not mistaken.

Q. And who was the stenographer who took down what you said?

A. Mr. Rittenhouse—Irvin Rittenhouse.

Q. Is that the Irvin Rittenhouse that is employed in the General Land Office of the United States at the present time? A. I think so.

Q. Now, was that the fact, that the arrangement was that you were to receive $75, or thereabouts, for your timber claim? A. Yes, sir.

(Testimony of Basil H. Wagner.)

Q. I will ask you now if the deed and mortgage which you have talked about this morning was not made in pursuance **[318—150]** of that original agreement, and to carry it out? A. It was.

Q. I will ask you if you did not state, in that same affidavit, at that same time and place, in Portland, Oregon, on the 28th day of December, 1904, before William J. Burns, yourself, and Mr. McKinley and Mr. Puter and Mr. Rittenhouse being present said statement and affidavit having been made in the Portland Hotel in Portland, Oregon, that "the next time I had anything to do with the transaction was when Mr. Kribs came to me at Salem, Oregon, in the month of July, 1901, and stated that he would like me to go before a Special Agent of the General Land Office, named Stratford, stating that the patents had not yet been issued for the land, and it would be necessary for me to make an additional affidavit. Mr. Kribs then took me to Stratford, at the Hotel Willamette, and there I signed an affidavit, the questions in which were asked by Stratford, but were answered in part by Kribs, and not wholly by me?"

A. Yes.

Q. Was that the fact? A. Yes.

Q. Now then, I ask you, Mr. Wagner, if you ever made any other affidavit in regard to this claim besides this one before him—before some other Special Agent?

A. Mr. Wilson, I believe, at one time.

Q. When was that?

A. I think that was in—let me see—I don't re-

(Testimony of Basil H. Wagner.)

member the exact date. That was about 1904, wasn't it?

Q. How did you come to go before Mr. Wilson?

A. Why, Mr. McKinley asked me to go before him.

Q. And where did you meet Mr. Wilson? **[319—151]**

A. In the Imperial Hotel.

Q. Did you see Mr. Kribs on that occasion?

A. No, sir.

Q. Where did you sign an affidavit for Mr. Wilson? A. I think in the Imperial Hotel.

Q. Was it the Imperial or the Portland?

A. Oh, let's see—I think it was in the Imperial.

Q. What did you do after you had signed it?

A. I went to Mr. Krib's office.

Q. How did you happen to go there?

A. Why, to ask him why this should be done.

COURT.—To ask him what?

A. Why this should be done.

Q. Why it should be done? Did you wait till after you had done it before you asked him why?

A. Yes.

Q. Well, what occurred there?

A. He gave me a check for $25.

Q. Did you ask him for it?

A. I don't—no, I don't think.

Q. Voluntary contribution on his part?

A. Yes.

Q. Do you remember where you cashed that check? A. Huber's Cafe, I believe.

(Testimony of Basil H. Wagner.)

Q. In Portland? A. In Portland.

Q. That was the same day that you signed the affidavit? A. I believe it was.

Q. In order to refresh your memory in connection with that matter, I will ask you if it was not at Room 210 in the Portland Hotel that you signed the affidavit with Wilson?

A. Yes, I believe it was. **[320—152]**

Q. That refreshes your memory that it was?

A. Yes, I believe it was.

Q. Now, Mr. Wagner, going back to these trails that were cut up there, what was the purpose of cutting a trail up there in that timber, if you know?

A. It was for the purpose of the buyers' going in there.

Q. Who was to introduce the buyers to the timber, if you know?

A. Mr. Kribs, I believe.

Q. Was it Mr. Kribs?

Mr. LIND.—Wait a moment.

Mr. McCOURT.—He didn't understand.

Q. Who did you understand the buyer to be that was to be introduced to the timber?

Mr. LIND.—If he knows; not guesswork.

Mr. McCOURT.—If he knows. I don't mean to lead him any more than might be necessary under the circumstances.

A. It was Mr. Smith, I believe.

Q. What? A. Mr. Smith, I believe.

Q. How long after you made your filing was it that you started cutting trails up there in the timber?

(Testimony of Basil H. Wagner.)

A. Well, it was about—oh, about three months, I believe; something like that.

Q. Did you handle the axe yourself?

A. Yes, sir.

Q. Did Mr. Tarpley handle an axe?

A. Yes, sir.

Q. You and Mr. Tarpley are not very strong with the axe, are you?

A. Well, we were after we cut that trail.

Q. Do you recall, during the time you were there, whether or not Mr. Smith was there in the timber? **[321—153]**

A. He was not.

Q. Not during your time? A. No, sir.

Q. Was Mr. Kribs?

A. Not at the time I was in there; not on the trail when I was there, no, sir.

Q. You didn't stay to await his coming?

A. No, sir.

Q. Do you recall anything in connection with these entries relative to Mr. McKinley having been arrested? A. I do.

Q. Where were you at that time?

A. At Mealey's.

Q. You were out there. And how long did you stay there after that?

A. Well, it was about—oh, several days.

Q. Where was Mr. McKinley arrested?

A. He was arrested in Albany, I believe.

Q. Well, after he was arrested, did you see him?

A. I did.

(Testimony of Basil H. Wagner.)

Q. Where? A. In Albany.

Q. Did he come out to the timber?

A. He did.

Q. Who was with him?

A. I think—let me see—I think he was alone at that time.

Q. Didn't Mr. Kribs come along at that time?

A. Well, I don't know whether he came at that particular time or not.

Q. Well, were you there at any time when Mr. Kribs was out there in the timber? A. Yes.

Q. How long before these proofs were made was it that Mr. **[322—154]** Kribs was out there while you were there?

Mr. LIND.—What proofs?

Mr. McCOURT.—Final proofs.

A. Let's see—as near as I can recollect—oh, several weeks I presume; several weeks.

Q. Before proofs were made? A. Yes, sir.

Q. Do you remember definitely that it was before proof was made? A. Yes, sir.

Q. Who was in the party when he came out?

A. I believe Mr. McKinley and he.

Q. Was Mr. Tarpley out there?

A. He was.

Q. What did Mr. Kribs do when he arrived out there, or rather where did he stay when he arrived out there? A. Mr. Mealey's.

A. Is that the same Mealey that you had been stopping with, and working with?

A. Yes, sir.

(Testimony of Basil H. Wagner.)

Q. And from the Mealey place, how far was it to this timber?

A. It was presumably eleven miles; that is, part of it; part of it, you see.

Q. How was the trip made from Mealey's to the timber? A. By foot.

Q. Eleven miles by foot all the way?

A. Part of the way. Yes, all the way by foot.

Q. Did Kribs walk?

A. Why, I don't know about that.

Q. What?

A. I don't know. I did not accompany him in through the timber.

Q. Was S. A. D. Puter there? **[323—155]**

A. Let's see; Puter? I believe not at the time I was there.

Q. Did you accompany Kribs and McKinley back to Albany? A. How is that, please?

Q. Did you accompany McKinley and Kribs back to Albany after that trip—after they had come out there? A. No; no.

Q. You still stayed on in the timber?

A. Yes.

Q. Were you at Albany at the time McKinley had his hearing there? A. I was.

Q. Was Kribs there? A. No, sir.

Q. Where was he? A. I don't know.

Q. Where did you come from to Albany?

A. From Roseburg.

Q. How long had you been in Roseburg at that time? A. Well, a few days.

(Testimony of Basil H. Wagner.)

Q. And did you see Mr. Kribs up at Roseburg?

A. I did see him there, yes.

Mr. LIND.—What occasion at Roseburg? Which occasion—final proof or entry?

Mr. McCOURT.—I think it was the proof.

Q. Was that the occasion of the final proof and the contest at Roseburg?

A. When I met Mr. Kribs at Roseburg, yes.

Q. Was there any hearing or controversy had in regard to some contest? A. Yes, sir.

Q. Over these claims there? A. Yes.

Q. How many days did that engage the attention of yourself and Mr. McKinley, Puter, Tarpley and others? **[324—156]**

A. Well, several days.

Q. Where was Mr. Kribs during that period, and what was he doing?

A. Well, I can't recall. I don't remember.

Q. Well, was he present there in Roseburg?

A. I think he was.

Q. Did you see him about the Land Office?

A. I did.

Q. While those hearings were transpiring?

A. I did.

Q. Were you acquainted at that time with Josephine Jacobs? A. Yes, sir.

Q. Did you act as a proof witness for her, do you recall? A. I did.

Q. Did she request you to act for her?

A. No, she did not.

Q. Who did? A. Well, I don't know.

(Testimony of Basil H. Wagner.)

Q. What? A. I don't know.

Q. Alvira Jacobs—were you acquainted with her?

A. Yes, sir.

Q. Did you act as a proof witness for her?

A. I think so.

Q. Did she request you to? A. No.

Q. Do you know who did? A. No.

Q. C. Frank Stewart—did you know that gentleman? A. I did.

Q. Were you a proof witness for him?

A. I was not.

Q. Do you remember whether you were named? Did you appear at Roseburg as a proof witness for him?

A. No, I cannot recall that if I was. **[325—157]**

Q. H. C. Barr—did you know him?

A. Yes, sir.

Q. Did he request you to act as a proof witness for him? A. He did not.

Q. Did you act as one?

A. I was on a number of those entrymen's as a witness, but I cannot recall them now.

Q. Well, now, do you know who placed your name—you do know who placed your name on the list, don't you?

A. It might have been Mr. McKinley.

Q. Were you and McKinley closely associated at that time? A. We were, in a friendly way.

Q. For how long previously?

A. Oh, since 1896 or '7.

Q. And since that time? A. Yes.

(Testimony of Basil H. Wagner.)

Q. And since you became acquainted with Mr. Kribs, what has been your relations with him?

A. None whatever.

Q. No relation?

A. No, absolutely none.

Q. You go to see him when you come to Portland, don't you? A. Yes, occasionally.

Q. Have done so in the past three or four years?

A. Yes, sir.

Cross-examination.

(Questions by Mr. LIND.)

Did you ever ask or solicit Kribs for money?

A. Sir?

Q. Did you ever ask or solicit Mr. Kribs for money? A. No, sir.

Q. Did he ever offer you any money as an inducement to do anything for him? **[326—158]**

A. Yes, sir.

Q. When?

A. It is several years ago. We were interested to the agency of H. T. Dow in Eugene, in some timber, and on that occasion I asked him for money for business purposes.

Q. Well, you mean by the way of a loan, or how, or what?

A. Yes; that is, to expedite a little business, that is not relative to this, you see.

Q. I had reference to any of these land matters that you testify to here. A. Oh, no, no.

Q. This forenoon or this afternoon?

A. No, sir.

(Testimony of Basil H. Wagner.)

Q. Did he ever offer to give you any money, or any consideration, if you would do any particular thing, make any affidavit, or anything of that sort?

A. No. That is, with the exception of the Stratford—when I appeared before Stratford, Special Agent Stratford.

Q. Well, now, tell us about that exception. Tell us the whole facts.

A. Or Mr. Wilson. When I went to the Imperial Hotel, or the Portland Hotel, after I got through with my work, that is, to signing this affidavit, I was paid $25 by Mr. Kribs.

Q. Had there been any talk about that before that?

A. Excepting through Mr. McKinley suggested.

Q. Suggested what?

A. That I might go to Mr. Kribs and receive a little consideration for expenses for the time that I was out.

Q. Well, was that after or before you had given your affidavit? A. That was afterward.

[327—159]

Q. What expenses had you been to?

A. From Salem to Portland—railroad fare and things of that sort. That was in regard to the Wilson affidavit.

Q. How?

A. That is in regard to the Wilson affidavit.

Q. And he paid you $25? A. Yes, sir.

Q. There had been no suggestion beforehand that he would pay you, or anything of that kind?

(Testimony of Basil H. Wagner.)

A. None whatever.

Q. Now, you have made a number of affidavits here, apparently somewhat conflicting, and conflicting with your stestimony perhaps given here on the stand. Now, where does the truth lie? At the time that you made this entry, filed on this claim, did you have any bargain with Mr. McKinley that the claim was for him, or did you just take the claim on his suggestion? A. I took it on his suggestion.

Q. What did you intend to do with it?

A. I intended to make a profit out of it.

Q. How?

A. As soon as he could dispose of it.

Q. To whom?

A. I didn't know at the time.

Q. Did he know?

A. I don't know whether he did or not, at the time the entry was made.

Q. What was the actual conversation between you and McKinley before you took this claim?

A. Mr. McKinley asked me if I would care to take up a timber claim.

Q. Yes.

A. And there probably might be $75—there would be a consideration **[328—160]** in it. And I accompanied him to Roseburg, and made entry, and then I came back to Salem. Then afterward I went up to the Mealey boys' place—the Mealey's—stayed there a while, and cut a trail, and came back to Albany, and then to Roseburg; then to Salem.

Q. Now, did Mr. McKinley say to you, or did you

(Testimony of Basil H. Wagner.)

understand from him, how this claim was to be handled—how the money was to be raised to pay for it? What did he tell you in that regard?

A. That he would seek a buyer.

Q. Yes.

A. And probably there might be profits accrue, and finally he told me—

Q. Was it understood between you that if there were profits, you would divide?

A. There would be a division. That is, there was a certain consideration he named—it was $75 at least.

Q. Yes.

A. And more if the sale of the land—if the consideration would be enough, you see.

Q. Did he tell you at the same time that he would take out $100 for his locating fees?

A. I believe he did.

Q. And the expenses; and if the claim was eventually sold for more than that, why, you would share the profits? Did he say something of that kind, or didn't he?

A. He told me if I helped him out that I would receive something.

Q. Helped him out how?

A. That is, by—being with him, and all this and that; more in a friendly way than anything else.

[329—161]

Q. In these preliminary talks before you went to Roseburg, did he ever say a word about selling the claim, signing over the claim to him?

(Testimony of Basil H. Wagner.)

A. He was to handle this business.

Q. As your agent? A. Yes, sir.

Q. In disposing of the claim, if there was a good chance to sell? A. Yes.

Q. Now, during the time before sale, after entry and before sale, would you have felt at liberty to sell to anybody for a good offer?

A. No, I would not.

Q. Why not?

A. Because there was a mortgage on those lands.

Q. No; no, I mean before the mortgage was given, between the time that you filed and the time that you went to Roseburg and proved up on the claim, if you had received a good offer for your filing, for your interest in the land, would you have felt at liberty to sell? A. Yes, I believe I would.

Q. Well, would you or would you not?

A. Yes.

Q. Was there anything in your understanding with McKinley to hinder you from making a sale?

A. There was not.

Q. If you had made the sale of the claim, what would he have been entitled to out of the proceeds?

A. Well, I don't know.

Q. Did he say anything about the amount that he was to have for his location fees?

A. No, there was nothing definite in that regard.

Q. What was the usual sum paid to a locator?

[330—162]

Mr. McCOURT.—Object to that as immaterial.

Q. Well, was there a customary price in that

(Testimony of Basil H. Wagner.)

vicinity paid to locators for locating a man on a piece of timber land, or any other piece of Government land?

A. I don't know. I don't know in that regard.

Q. You don't know?

A. No. Probably $100—something like that.

Q. Well, was that the understanding? Was that the usual amount that was paid to locators?

A. Well, the men that were operating in that country, they could tell you better than I could. I don't know.

Q. Well, you knew something about the land business, did you not?

A. A little yes, in a clerical way.

Q. You had been in the Land Office, had you not?

A. Yes.

Q. Clerk in the Land Office? A. Yes.

Q. Where? A. Salem, Oregon.

Q. Had you had anything to do with the making out of papers concerning Timber and Stone entries?

A. No, sir.

Q. What was your work in the Land Office?

A. Why, just simply of a clerical nature—copying and things of that sort.

Q. You were familiar with the land laws in a general way, were you, or were you not?

A. I was in regard to the State land laws, yes.

Q. Oh, just State land laws.

A. School land office.

Q. It was not in the United States Land Office you worked?

(Testimony of Basil H. Wagner.)

A. It was not in the Government Land Office, no, sir.

Q. When you filed on this land, did you file on it for your **[331—163]** own benefit? A. I did.

Q. Or for somebody else's benefit?

A. My own. My own use and benefit.

Q. When was it first suggested to you that Willd might buy it, or would buy it?

A. By Mr. McKinley in Roseburg.

Q. At the time of the final proof?

A. Yes, sir.

Q. Was that the first time that there had been any conversation between you and McKinley in regard to any sale of the land? A. It was directly, yes.

Q. Well, now, what had there been indirectly, if anything, before that time?

A. I don't—can't recall it. He had interested Mr. Kribs in this matter, I believe. He had spoken to me about that.

Q. When did he speak to you about that?

A. That was—oh, it was prior to the final proof.

Q. How long prior to the final proof?

A. Why, it was some weeks probably. I have forgotten—it is so long ago.

Q. How long after the first entry? Perhaps you can locate it better that way. I mean, the filing.

A. Well, it was probably—oh, about a month, I guess, something like that, or maybe longer. I have forgotten—it has been so long ago.

Q. What did he say about Kribs?

A. He said that he had a buyer by the name of Mr. Kribs, or could interest him in the matter of tak-

(Testimony of Basil H. Wagner.)

ing up these claims—buying them. **[332—164]**

Q. What else did he say, if anything?

A. That is about all he said in that regard.

Q. That he might buy them?

A. Yes; might handle them.

Q. Or handle them? A. Yes.

Q. Now, when you signed this affidavit made before Burns, under what circumstances was that signed? Tell the Court briefly and frankly?

A. I came to Portland and signed those affidavits—the affidavit to Mr. Heney and Burns—not thinking that the statute of limitations had expired.

Q. Well, now, you are frank—go on.

A. And so I rushed in there and signed this affidavit, or made it, as near as I could remember. And after the lapse of years one is forgetful about those things—I know I am—not having paid attention to those things up to that time, and being naturally more or less timid.

Q. Now, at the time you signed that affidavit, the grand jury was in session, was it not?

A. It was, yes.

Q. In the Federal Court in this city. Mr. Heney, the Government prosecutor, was here prosecuting evil doers in connection with the public lands?

A. Yes, sir.

Q. Mr. Burns was his right-hand man and detective. Who took you in charge when you arrived in the city—who introduced you to Mr. Burns?

A. Mr. Tarpley.

Q. Mr. Tarpley. Now, what was your object in going to Mr. Burns?

(Testimony of Basil H. Wagner.)

A. Well, I thought I would go there and make a clean breast **[333—165]** of it in a sort of way, you know, to kind of square this thing up, if I could.

Q. For what purpose?

A. Well, to get it straightened out.

Q. To get what straightened out?

A. This land deal.

Q. To get immunity from prosecution?

A. Partially, yes.

Q. Well, now, to get that immunity, did you tell the truth or did you stretch the truth?

A. I told the truth, as near as I could remember it.

Q. You say in that affidavit, if I understood your answer correctly, that you sold—that you agreed to sell this claim to McKinley for $75. Now, did you ever make any such agreement?

A. To sell it to McKinley for $75?

Q. Yes.

A. Why, no, not to sell it to him for $75.

Q. Well, what did you say then? May I have that affidavit a moment?

A. To sell it? By George, I didn't.

Q. "McKinley told me at the time that I would receive $75 for making the entry."

A. Yes, sir.

Q. That is what you are made to say in this affidavit. By the way, who drew up that affidavit?

A. I think—let's see—

Q. That is the one taken before Burns?

A. Why, Burns drew up that affidavit.

Q. Who dictated it—you or Burns?

(Testimony of Basil H. Wagner.)

A. He did.

Q. What was the condition of your nervous system? Did you **[334—166]** know whether you were afoot or horseback at the time?

A. I was a good deal of horseback, I guess.

Q. Now, as a matter of fact—

A. No, I was a little frightened.

Q. Now, as a matter of fact, did McKinley ever tell you that you were to turn over the claim to him before you made the entry, or afterwards?

A. I left that to his discretion. He was my agent.

Q. That does not answer the question. You can answer that question.

A. I told him he might do that.

Q. Do what?

A. Sell it for $75, if he wished.

Q. If you could realize that out of it?

A. Yes, sir.

Q. When did you tell him that?

A. In Roseburg.

Q. At the time of the final proof?

A. Yes, sir.

Q. As a matter of fact, when you went into this, you and McKinley were friends? A. Yes, sir.

Q. You wanted to make what you could out of the claim, and were willing that he should handle it for you—is that it? A. Yes, sir, that is correct.

Q. If he made sale of it later on, you would be satisfied? A. Yes, sir.

Q. Was there a word passed between you, or any understanding directly or indirectly, that you could not have sold it if you had had an opportunity to sell?

(Testimony of Basil H. Wagner.)

A. Before the transaction was consummated, McKinley came to me and asked me if I was satisfied.

[335—167]

Q. To sell?

A. With the $75—to sell for the $75—and I said yes.

Q. When was that—at Roseburg?

A. Yes, sir.

Q. Well, was that at the time of the final proof?

A. It was.

Redirect Examination.

Q. He gave you $100, didn't he?

A. Afterwards, yes. He gave me a little more money afterwards. I received some more after this $75.

Q. Well, Tarpley and McKinley and Puter took you up and introduced you to Burns, didn't they?

A. They did.

Q. You were not afraid of any of them?

A. No.

Q. And a few days later, you became a sort of clerk or assistant of Mr. Burns?

A. I worked under him awhile, yes.

Q. And you didn't feel in any particular awe of him, did you? A. No, not afterward.

Q. And you intended then, and you say now that you did tell the truth, as nearly as you could remember it at that time?

A. As nearly as I could remember it.

Q. That was five years—four years ago, wasn't it? Five years ago?

A. It is five years ago, yes.

(Testimony of Basil H. Wagner.)

Q. Your memory was just as fresh then as it is now about those transactions?

A. Well, nearly, yes.

Q. Isn't it a fact that when you went into the transaction you expected to get $75 out of it, and were told so by McKinley? A. Correct. **[336—168]**

Q. And when it had been concluded, you had not spent a cent upon it, and you had got just what you started in to get? A. Correct.

Q. You did not know what McKinley was going to do with the land? That is, you did not know whom he was going to transfer it to in the beginning, and you did not know when it was concluded whom it had been transferred to? A. That is right.

Witness excused. **[337—169]**

[Testimony of Neal Dozier, for the Government.]

NEAL DOZIER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Dozier?

A. I live at Pendleton.

Q. How long have you lived at Pendleton?

A. About seven years, I think—eight years.

Q. Where were you living in January, 1900?

A. Living in Roseburg.

Q. How long did you continue to reside there after that date—say January, 1900?

A. About six or seven months, I think.

(Testimony of Neal Dozier.)

Q. What business were you engaged in there at that time?

A. I was working in a butcher-shop awhile; working in a wire house awhile—laboring.

Q. Did you own any property there at the time?

A. No.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Daniel W. Tarpley? A. Yes, sir.

Q. S. A. D. Puter? A. No, sir.

Q. Don't know that gentleman?

A. Just know him when I see him.

Q. Do you know Fred Kribs? A. Yes, sir.

Q. How long have you known him?

A. I met him last summer about five minutes.

Q. Is that the first time you met him?

A. The first time I ever met him in my life.

Q. Do you remember the incident of making a timber and **[338—170]** stone entry of lands in Linn County, Oregon? A. Yes, sir.

Q. In 1900? A. Yes, sir.

Q. Tell the Court the circumstances under which you took the claim, and surrounding the taking of the same.

A. There was a friend of mine of the name of Jaggy asked me if I didn't want to take a timber claim—said there was a fellow here located people—give me a chance to make a little money out of it.

Q. How much money?

A. I think he said $50 at that time. I told him I did. So the next morning, I believe it was, he introduced me to him.

(Testimony of Neal Dozier.)

Q. To whom? A. Mr. McKinley.

Q. Where was that?

A. In a saloon. We went out back of the saloon then, and he explained the circumstances to me, and I took him up.

Mr. LIND.—Speak louder, please.

Q. Where were you introduced to him—what part of the saloon?

A. In the front part of the saloon.

Q. Where did you have your conversation?

A. In the back yard, back of the saloon.

Q. Who was present? A. Nobody.

Q. Just you and McKinley?

A. That is all.

Q. After that conversation, what did you do?

Mr. LIND.—Well, what was said?

Mr. McCOURT.—Never mind. I am examining this witness.

A. Well, I don't remember, when I filed on the land—somewhere close to that—two or three days maybe—that I filed.

Q. And did you ever go to see the land? **[339—171]**

A. Yes, sir.

Q. When, with reference to the time you filed?

A. Well, it was some days afterwards—I couldn't say how long afterwards—I went down, and went up and looked at the land.

Q. How did you get there?

A. Why, I went on the train.

Q. Who was in the party that you knew?

A. Well, there was several in there. I can men-

(Testimony of Neal Dozier.)

tion some of the names.

Q. Well, mention all you can recall.

A. There was Johnny Jaggy, Jim Doty, and Ira Pilkington.

Q. Who else?

A. A man by the name of Zebulon Smith.

Q. Anybody else?

A. That is all I can recall just now.

Q. Who was piloting the party—looking after their welfare?

A. I don't remember. I believe Mr. McKinley told me that evening to go; several of us went together. I don't remember who piloted us.

Q. Where did you leave the train?

A. At Halsey.

Q. Then what occurred?

A. Well, we got in rigs, and went up to this land —stayed all night.

Q. Were the rigs waiting for you when you got there?

A. Well, I believe some of them was, and some of them come later on.

Q. Who were the drivers?

A. I don't remember.

Q. Whose place did you stay at when you got up to the land?

A. Well, I don't know the boys' names. I know them when **[340—172]** I see them in town.

Q. Around here now, are they?

A. I see one of them the other day, yes.

Q. Mealey? A. Mealey, yes.

Q. What did you do after you got to Mealey's?

(Testimony of Neal Dozier.)

A. Well, we stayed all night, and the next day we went out and looked at this land.

Q. Who showed you upon the land?

A. Mr. Tarpley showed me. There was two or three fellows along.

Q. Who were the other fellows?

A. I don't remember their names, and I don't know them if I would see them.

Q. Well, what did you do after you had inspected the land?

A. Well, I went back to Roseburg, and later on I made final proof on the land.

Q. How did you ascertain when to make final proof?

A. I don't remember exactly how, but I suppose somebody told me.

Q. Did you have anything to do with publishing a notice in the newspaper? A. No, sir.

Q. Or procuring witnesses for your final proof?

A, I believe Mr. McKinley said he would act as a witness, and somebody else. I don't know who the other fellow was—I forget now.

Q. Where did you make your final proof?

A. In the Land Office.

Q. Did you see Mr. McKinley just before you went into the Land Office? A. Yes, sir.

Q. Did you see Mr. Tarpley? **[341—173]**

A. I don't remember, but I think I did.

Q. Have any conversation with Mr. McKinley?

A. Yes, sir.

Q. What about?

A. Well, he told me to go up there and prove up.

(Testimony of Neal Dozier.)

There were several of us went up together.

Q. Did he instruct you how to prove up?

A. I believe he told me what I would have to do to prove up, yes.

Q. What did he tell you you would have to do more particularly that you remember?

A. Well, I don't remember him telling me anything in particular. They would ask me questions, and I was supposed to answer them, I guess.

Q. Did he have a blank form there in which he told you the questions that would be asked you?

A. No, sir.

Q. He did not? Now then, you went into the Land Office to prove up, and who was there that you knew?

A. I remember a fellow by the name of Adkison and Ira Pilkington.

Q Was Smith—Zebulon Smith—and Jaggy there?

A. I saw them there that day; but they were the only two I remember sitting there alongside of me—these two were sitting down beside of me; I remember them.

Q. Was McKinley there?

A. He was in and out of there. I remember seeing him.

Q. Tarpley?

A. I can't say for sure about Mr. Tarpley, but I believe he was there that day.

Q. Well, after you had made the proof, who paid for the land? **[342—174]**

A. Mr. Tarpley paid me.

(Testimony of Neal Dozier.)

Q No, who paid the Land Office?

A I don't know.

Q. Did you pay it? A. No, sir.

Q. Who paid the expenses of going up to look at that land?

A. Mr. McKinley, I suppose. He said he would look after that.

Q. Did you pay out any money in connection with the claim, of any kind?

A. No, I don't believe I did.

Q. Did you pay any newspaper for publishing the notice of proof? A. No, sir.

Q. Well, when you got through proving up there, where did you go—what did you do?

A. I went down town.

Q. Well, when was it you saw Mr. Tarpley in connection with the transaction after the proof?

A. Well, I don't remember whether it was the next evening, or the next evening after that. It was either the next evening or the next evening after.

Q. How much did he pay you?

A. He gave me $75.

Q. Did you sign any papers?

A. Well, I did in a day or two after that.

Q. What did you sign?

A. Well, I really couldn't tell you what it was.

Q. What did you think you were signing then?

A. Well, I forget. I knowed what it was then, but I don't know now. I read the paper over and signed it. I don't remember what it was.

Q. Was Jaggy there?

A. No, sir. **[343—175]**

(Testimony of Neal Dozier.)

Q. Just Tarpley alone?

A. Tarpley wasn't there then at all.

Q Oh, he wasn't there when you signed the paper? A. No, sir.

Q. You signed the paper after you got your money? A. Yes, sir.

Q. Who was there at that time, when you signed the paper?

A. McKinley and a lawyer, I forget his—Shupe, I think, was his name.

Q. Was that in Shupe's office? A. Yes, sir.

Q. Well, did you sign any more than one paper that you remember?

A. Yes, I remember signing some other papers—a notice and something else.

Q. Did you sign all the papers that you did sign at the same time? A. No, sir.

Q. How far apart were the signatures given? How many days apart?

A. I don't remember. It was a few days apart. I could not say for sure whether it was one day, or two days, or a week.

Q. Just a few days? Did McKinley come and get you to sign the papers both times?

A. Yes, I think he did. I am pretty sure he did.

Q. Was it the same day that you made proof that you got the $75?

A. I think it was the next morning, or the next evening after that. No, it was not the same time, I don't believe. No, I know it was not.

Q. How did Mr. Tarpley pay you that money?

A. In gold. **[344—176]**

(Testimony of Neal Dozier.)

Q. What? A. In gold money.

Q. Now then, when you had this talk back of that saloon there with Mr. McKinley, about this transaction, what did he tell you there?

A. Well, I can't remember all he said. We talked there for quite a long time. But he give me to understand he wanted me to take up this claim, and he would furnish the money, and when I got ready to sell, to give him a chance at it.

Q. Did you understand from that conversation there, that the lands was to be transferred to him, or somebody for him, and you to get $75 for it?

A. He said to give him a chance at it, yes.

Q. Now, then, did you ever ask anybody else to lend you any money on that? A. No, I didn't.

Q. Did you ever try to sell it to anybody else?

A. No, sir.

Q. Did you ever have any further conversation with Mr. McKinley as to what you were going to do with the land, until you did actually deed it to him?

A. Yes, sir, I did once.

Q. When was that?

A. I think it was the day before I proved up.

Q. You made him raise from $50 to $75?

A. No, sir, he had already raised.

Q. Oh, he had already raised it? When did he raise the price?

A. Well, I don't know. It was a few days before that, before I proved up.

Q. Did you indicate to him that $50 was not enough? A. No, sir.

Q. How did he happen to raise? **[345—177]**

(Testimony of Neal Dozier.)

A. I couldn't say.

Q. Do you recall that there was a contest about the claims down there?

A. Something like that—there was just a rumor around. Some of the boys told me—some of the other boys.

Q. Did you understand that that had something to do with it?

A. Well, I thought maybe it did. I didn't know.

Q. Now, when you got this $75, did you ask for any more money? A. No, sir.

Q. When they asked you to come and sign a deed, did you make any? A. No, sir.

Q. Did Tarpley say anything to you about that being for the sale of your land, when you got the $75?

A. Yes, sir.

Q. What did he say? A. What is that?

Q. What did Tarpley say when he gave you the $75?

A. He said he was much obliged to me, and if we could do anything later, he would see me again.

Q. You hadn't yet turned the land over to him, or mortgaged it either?

A. Well, I don't think I had.

Q. So after he had given you $75, in addition to furnishing all your money, then you made a mortgage?

A. Well, I can't say for sure whether it was after or before.

Q. What was the explanation of why you should give a deed a couple of days later?

A. Well, sir, he just come along and says, "I

(Testimony of Neal Dozier.)

want you to **[346—178]** go up to the office a little bit," and talked to me a little while—"and sign the papers." That was Mr. McKinley. And I went up with him, and signed them.

Q. Did you make any objection to signing the papers? A. No, sir.

Q. Went right along? A. Yes, sir.

Q. You understood that to be part of the transaction? A. Yes, sir.

Q. Did you understand that you had any deed to sign when you signed the mortgage?

A. I can't say that I did.

Q. You thought that was the end of it?

A. I can't say now. I don't know. I might have thought different, but I can't say now what I thought.

Q. You just waited for instructions, and did as you were directed by Mr. McKinley in the transaction? A. Yes, sir.

Cross-examination.

(Questions by Mr. LIND.)

I wish you would give us the conversation—that first conversation that you had with Mr. McKinley, in full, what was said by him and what was said by you in regard to this proposition.

A. Well, I can't remember everything. It is a long time ago.

Q. No, but I mean what you can remember.

A. Well, he told me he wanted to locate me on this piece of land, or asked me if I wanted to take a piece of land, one—I don't remember exactly that—I told him I did. And he told me that he could locate

(Testimony of Neal Dozier.)

me on this land and how much there was in it. **[347—179]**

Q. What else?

A. He says, "I will furnish the money, and when you get ready to sell, I want you to give me a chance at it."

Q. He wanted you to give him a chance to handle it? A. Yes, sir.

Q. Sell it for you? A. Yes, sir.

Q. Did you say you would? A. Yes, sir.

Q. Was that all the talk you had on that first occasion?

A. No. We talked there quite awhile. I don't remember everything we said.

Q. Well, try to remember as much of that first conversation as possible. It is important.

A. Well, I think I gave you about the outline of it. I cannot remember everything we said.

Q. Did he tell you that he wanted you to make the location for him—make the filing for him, or for yourself? Whom did you make that filing for—for McKinley or for yourself?

A. Why, I made it for myself, I suppose.

Q. How?

A. I suppose I made it for myself.

Q. Well, is that what you intended?

A. Yes, sir.

Q. Now, after you had made the filing, did you have any conversation with any of the others who had made similar filings in regard to raising the money for making final proof elsewhere than through McKinley?

(Testimony of Neal Dozier.)

A. Well, I believe I talked about it different times, but I don't remember what was said about it.

Q. Did you have a conference with Mr. Pilkington and two or three others, to pool your claims and borrow the money elsewhere than through McKinley?

A. Well, I remember talking one day about this proposition **[348—180]** if he didn't pay us any more money than this $50, that we would see if we could not get another buyer.

Q. You would see if you could not what?

A. Get another man to buy this land.

Q. When was that? Before final proof or after?

A. Well, it was before final proof.

Q. Was it after you had made the entry?

A. Yes, sir.

Q. What did you understand you would get out of the mortgage, in the first conversation? Did McKinley tell you that he would get some one to loan the money to put a mortgage on the land for the final proof money and expenses?

A. I think that is the way he expressed it. It is something like that. He said he would furnish the money, and he would guarantee me $50, and he thought he could do a little better.

Q. Did he say how much he expected to place the mortgage for?

A. No, he didn't at that time.

Q. When did he next mention the subject of mortgage to you?

A. Well, about the day—along about the time I proved up.

(Testimony of Neal Dozier.)

Q. What did he say then?

A. Well, he said he would have to mortgage this land—we would raise the money, and for me to sign these notes he was telling me about. That is all I know.

Q. And you did so? A. Yes.

Q. At that time did you regard the land as yours or McKinley's?

A. I regarded it as mine in a way, yes—as my right. I was looking to him to do the business part of the transaction.

Q. Did you expect him to sell it for you?

A. Well, yes, I expected him to sell it for me

[349—181]

Q. How long had you known McKinley?

A. At that time?

Q. Yes.

A. Well, I just met him that morning I was telling about, the first morning I ever remember talking to him.

Q. Before you made the filing?

A. Yes, sir.

Redirect Examination.

Q. You did expect him to sell it for you?

A. Yes, sir.

Q. Did you ask him what he had sold it for when he came around to get you to sign a deed?

A. No, sir.

Q. Did you notice how much the mortgage was for, or pay any attention to it?

A. Yes. I read it over.

Q. Did you ask him where the balance of the

(Testimony of Neal Dozier.)

money was going to? A. No, sir, I did not.

Q. Didn't care anything about that, did you, as long as you got your $75? A. No.

Q. Now, then, the talk you had with Pilkington and those fellows was that you would look around and see if you could not get a buyer that would pay you more than $50, that McKinley had promised to you? A. He told me to himself.

Q. Pilkington? A. McKinley did.

Q. What was he to get out of it if you did sell it?

A. I was to give him his money back.

Q. What money? **[350—182]**

A. That he was out on me.

Q. Was he to take you up there in Linn County, take you out on the land, pay your publication fees, tell you when to go to Linn County, tell you when to prove up, make out all these deeds, and just get his money back?

A. He said if I sold it to anybody else, why, he would expect his money back out of it.

Q. Well, I should think he would. Weren't you to pay him any location fee of any kind?

A. No.

Q. Nothing at all? Whose saloon was that that he visited there and met you in?

A. Thompson's.

Q. Thompson's saloon? A. Yes, sir.

Q. Thompson took an entry too, didn't he?

A. I believe he did.

Q. What was Doty's business there at that time?

A I think he was a plumber.

Q. What was the business of Jaggy?

(Testimony of Neal Dozier.)

A. He was a bartender.

Q. And Zebulon Smith?

A. He was a waiter on a table.

Q. And Ira Pilkington?

A. He is a blacksmith.

Q. And Adkison? A. Blacksmith.

Q. And what did you say you were doing?

A. I wasn't doing anything then. I had been working in a wirehouse and in a butcher-shop.

Q. You worked in that same Thompson's saloon part of the time, didn't you? A. Yes, sir. **[351—183]**

Mr. McCOURT.—I wish to introduce the deed and mortgage, like all the rest of them, of Neal Dozier to Frederick Kribs and John A. Willd.

Marked "U. S. Exhibits 65 and 66."

Witness excused. **[352—184]**

[Testimony of Henry Blakely, for the Government.]

HENRY BLAKELY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Mr. LIND.—This witness is a defendant in the case, and appears by other counsel. I have not conversed with him, and do not care to examine.

Q. Where do you live, Mr. Blakely?

A. Brownsville.

Q. How long have you lived at Brownsville, Mr. Blakely? A. Fifty years and over.

Q. What is your business?

A. Well, I used to be a farmer.

(Testimony of Henry Blakely.)

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Daniel W. Tarpley?

A. Well, I knew a fellow by that name at one time. I see a fellow down here they call that, but he don't look like he did when I knew him.

Q. You saw him when you came down here one time? A. Yes, sir.

Q. How long ago? When was that?

A. You mean when Mr. Burns was here?

Q. Oh, yes. You met Mr. Burns, too, did you?

A. Yes, sir.

Q. Do you know Fred Kribs?

A. I met him since I have been here in town.

Q. You mean since you have been here this last time? A. Yes, sir. **[353—185]**

Q. Did you meet him about two years ago when you came down here? A. No, sir.

Q. Didn't meet him?

A. Not that I know of.

Q. S. A. D. Puter—do you know him?

A. No, sir.

Q. Never met that gentleman?

A. No, sir.

Q. How long have you known Mr. McKinley?

A. Well, I have known him ten or fifteen years, I suppose—ever since he came here to the country.

Q. Do you remember, Mr. Blakely, the incident of filing upon a timber claim up in Linn County?

A. Yes, sir.

Q. In the year 1900, along in January or February? February 26th, I think.

(Testimony of Henry Blakely.)

A. Yes, sir.

Q. You say you do remember that?

A. Yes, sir.

Q. Will you please tell the Court, Mr. Blakely, who it was suggested that you take the claim?

A. Well, Mr. Harrison is the first man that spoke to me about it—said Mr. McKinley had 'phoned him that he had seven claims up there.

Q. Seven claims? A. Yes, sir.

Q. What Mr. Harrison was that—John Harrison? A. Yes, sir, John Harrison.

Q. Seven; what kind of claims?

A. Timber claims.

Q. Well, what had that to do with you?

A. Well, I wanted one myself.

Q. What did he want to do with them—McKinley? A. I don't know about that. **[354—186]**

Q. Well, what did you do when Harrison told you that?

A. Well, I went over to the 'phone, and called McKinley up, and talked to him over the 'phone.

Q. Then, what was said?

A. Well, I asked him what there was in that—in them timber claims—as near as I remember; and he said there was about $75.

Q. Well, then, what happened? What did you do then?

A. Well, I says, "Ain't there more than that in it?" I says, "There ought to be more than that in it," or something like that.

Q. What did he say then?

(Testimony of Henry Blakely.)

A. Well, he said he didn't know whether there was or not.

Q. Well, what did you do then?

A. Well, he came up there—or he didn't—he 'phoned to us then that he would meet us at Mealey's.

Q. Well, but you did something before that. Whom did you go and see then, before you went?

A. I went and seen Frank Burford and Jim Cooley and my son.

Q. What is your son's name, now?

A. Hugh. Hugh Blakely.

Q. Hugh Blakely?

A. Hugh Blakely, yes, sir.

Q. Who else? A. Billy Stillwell.

Q. Billy Stillwell some relation of yours?

A. Yes. He wasn't at that time, though.

Q. What did you say to them when you went to see them?

A. I told them Mr. McKinley had these claims up there—seven claims.

Q. What else did you tell them? **[355—187]**

A. I asked them if they wanted to go up and take one.

Q. Did you tell them how much McKinley said would be in it? A. Yes, sir.

Q. Then, what did you do then?

A. Well, we went up there and located. I had taken my team and taken them up there, all of them.

Q. You took them up to Nealy's? Now, where did you go from Nealy's?

A. From Nealy's we went up onto these claims, I suppose.

(Testimony of Henry Blakely.)

Q. Who took you to show you the claims—show you the numbers? A. Tarpley.

Q. Did he have the numbers there upon paper, or how did he know how to go and show them to you?

A. Well, I couldn't tell you that, how he knew.

Q. How did he know which would be Blakely's claim, or which would be Burford's claim, or Stilwell's?

A. Well, he had taken us all—he had taken me on a claim separate there, I suppose he did all the rest of them—showed me the corners—said: "There is your corners."

Q. How far from Nealy's was this claim he showed you?

A. We left in the morning pretty early, as quick as it was light, and we got back late in the evening.

Q. Do you know about how far you had travelled away from Nealy's before you got to your claim, say?

A. Well, we thought it was a long ways. I don't know. We was gone all day. It was up the mountain.

Q. Well, after you had looked at those claims, then where did you go from Nealy's? **[356—188]**

A. We came back home.

Q. To Brownsville? A. Yes, sir.

Q. And how long did you remain there before you took another step in the transaction?

A. Well, I couldn't say about that, how long.

Q. Well, about? I don't care for a day or two, or a week. Just as you recall it now, where did you next go to, and what did you do?

(Testimony of Henry Blakely.)

A. Well, we next went out to Roseburg to file on those claims.

Q. All seven of you? A. Yes, sir.

Q. That was Mr. Stilwell, Mr. Burford, Mr. Harrison, Mr. Cooley, Hugh Blakely,—

A. And Mr. Harrison's son, Earnest.

Q. Where did you take the train?

A. At Halsey.

Q. How did you get to Halsey?

A. I don't remember that.

Q. Didn't you take your team?

A. Well, I cannot remember whether we took my team, or whether we had got another team.

Q. How did you happen to take your team out there to Nealey's?

A. Well, I had a team of my own. I had just taken my own team.

Q. All right. When you got to Halsey, whom did you see there?

A. We didn't see anybody at Halsey.

Q. Did you see McKinley?

A. No, sir, not in Halsey. **[357—189]**

Q. Where did you see him?

A. Saw him on the train after we got on.

Q. Did the party buy tickets at Halsey?

A. No, sir. Mr. McKinley 'phoned to me and told me not to get any tickets; that he had special rates, that he could get them cheaper than we could.

Q. Had an arrangement with the Railroad Company? A. I don't know about that.

Q. All right. You got to Roseburg then and

(Testimony of Henry Blakely.)

filed? A. Yes, sir.

Q. Where did you stop in Roseburg, do you remember?

A. Well, we stopped at a hotel there.

Q. Who paid the expenses for the party?

A. For filing?

Q. For the party at the hotel?

A. At the hotel?

Q. At the hotel.

A. I couldn't tell you. They was paid by somebody.

Q. Well, your ticket back—did you buy any tickets coming back? A. No, sir.

Q. Did McKinley come back with you?

A. Well, I wouldn't say whether he did or not. I think we had return tickets.

Q. Did you publish any notice of proof, or anything of that kind, in regard to the claim?

A. No, sir.

Q. Never did that? Do you know who did it?

A. Yes, sir.

Q. Who did? A. Mr. Brown. **[358—190]**

Q. What? A. Editor Brown.

Q. Editor Brown published it in his paper, but who paid him?

A. Why, he told me that McKinley paid him. I asked him.

Q. What was the next thing that was done? When did you next hear from these claims, and who told you about them?

A. Well, we next heard from them, I suppose,

(Testimony of Henry Blakely.)

when we went out to prove up on them.

Q. But who told you it was time to make proof? Who notified you to go up there, when to go?

A. I couldn't tell you.

Q. Did you all go together again?

A. Yes, sir.

Q. Where did you take the train?

A. At Halsey.

Q. Who was there when you got there?

A. McKinley was on the train.

Q. Did you buy tickets that time?

A. No, sir.

Q. Well, after you got to Roseburg, what did you do?

A. Well, we got to Roseburg, I think, it was early in the morning, or in the night some time, and the next morning we went up and proved up on the claims.

Q. The whole party? A. Yes, sir.

Q. Did you see Mr. McKinley there?

A. Yes, sir.

Q. And where did you stop that time?

A. We stopped at the same place, I think, when we was out, as we did before when we was out.

Q. Who paid your expenses then?

A. I don't know. **[359—191]**

Q. Well, did you pay any money to the land officers there at Roseburg next day when you proved up?

A. No, sir.

Q. Or did any of the other party?

A. Well, I couldn't say for the other party. I did not.

(Testimony of Henry Blakely.)

Q. Do you know who paid them?

A. Well, McKinley said he would pay them.

Q. Well, after you made your proof, what happened? A. Well, in regard to what?

Q. In regard to the claim—timber claim.

A. Well, the rest of the boys there, the boys was all single fellows outside of, I think of Mr. Harrison and I—John Harrison—they wanted to sell their claims, and did sell them, now, that day, I think.

Q. What?

A. They sold them there that day, I think.

Q. To whom?

A. Well, I couldn't tell you that.

Q. Were you present when they executed the deed?

A. Well, I don't know whether I was or not.

Q. Did they tell you what they got for them?

A. Well, the understanding was, I think, that they got $75.00 outside of all expenses.

Q. That same $75.00 that you told them they would get before they ever went down there to Nealey's at all? A. I suppose so.

Q. Well, what did you do with yours?

A. I sold mine.

Q. That same day?

A. No, I don't think so, hardly. **[360—192]**

Q. What? A. I don't think so.

Q. Well, did you get the pay for yours that day?

A. I don't think so. I wouldn't be positive on that.

Q. Well, what did you get for yours?

(Testimony of Henry Blakely.)

A. I got $110.

Q. How much did you get for your claim?

A. Well, I got $110 outside of all expenses.

Q. That $110 included services that you had rendered, didn't it, team hire, and one thing and another?

A. Well, yes, they was to pay me for the team hire.

Q. Whatever there was over the $75.00 there, up to the $110 was services that you had rendered for them, furnishing team and looking after the transaction?

A. Well, I had just taken my team from Brownsville to Mealey's, that I am sure of; but about to Halsey, I wouldn't say—I don't know.

Q. You don't remember that? A. No.

Q. Whom did you deed the land to?

A. Well, I wouldn't say positive whom I deeded it to, but we talked it over amongst ourselves.

Q. Well, I know, but whom did you think you were deeding it to at the time?

A. Well, a man by the name of Willd.

Q. At the time, though, you signed the deed, whom did you think you were deeding the land to?

A. I thought I was deeding it to Horace McKinley.

Q. Yes, of course you did, pursuant to the arrangement you made up there in Brownsville before you ever started out—you thought you were carrying out the original arrangement there with Horace? **[361—193]**

(Testimony of Henry Blakely.)

A. Well, I supposed Horace was the man. I knew he had been dealing in timber up there, and I supposed he was still dealing in it.

Q. You thought he was getting the land?

A. Yes, sir.

Q. Did your son Hugh Blakely, execute his deed right there on the day, in Roseburg, that he got through proving up? A. I think so.

Q. You were married at the time, and your wife was not down there, was she? A. No, sir.

Q. So it was necessary to come up there—

A. To Brownsville.

Q. To Brownsville to get her to sign the deed? As a matter of fact, you signed the note and mortgage down there at Roseburg, didn't you, and the deed, too? A. The deed?

Q. What?

A. No, I don't think I signed the deed down there.

Q. Well, you did sign the note and mortgage for $600.00? A. I expect so. **[362—194]**

Q. Was Dan Tarpley there when you signed the mortgage?

A. Not that I know of. He might have been. I would not say about that.

Q. Was a man by the name of Crawford there?

A. Not that I know of.

Q. Now, do you recall going into a little room outside of the Land Office there right away after you had made proof? A. Outside of the Land Office?

Q. Yes. A. No, sir.

Q. Right in the same building, I mean.

(Testimony of Henry Blakely.)

A. No, sir.

Q. You don't remember that?

A. No, sir.

Mr. McCOURT.—In connection with this witness' testimony I will offer the usual deed and mortgage.

Mortgage is marked "U. S. Exhibit 67."

Deed is marked "U. S. Exhibit 68."

Cross-examination.

(Questions by Mr. BANKS.)

How long did you say that you have lived down at Brownsville, Mr. Blakely?

A. Fifty years, off and on.

Q. You are one of the old settlers down there, aren't you? A. Yes, sir.

Q. And had you, prior to the time that you had this conversation with McKinley, had you discussed with your neighbors there the possibility of taking a timber claim?

Mr. McCOURT.—I object to that as immaterial.

A. Well, we had talked it over amongst ourselves, us boys.

Q. That was prior to the time that McKinley telephoned to you? **[363—195]**

A. Yes, sir.

Q. Now, you never saw McKinley from the time you had this telephone conversation, prior to the time you went up to look at the land, until you met him on the train when you went down to make your filings, did you?

A. Not that I remember of.

Q. In this telephone conversation that you had

(Testimony of Henry Blakely.)

with McKinley, did you agree to sell to McKinley that claim that you were to take up for $75.00, that or any other sum?

A. He told me this. He says, "If you don't sell me this claim," he says, "you can sell it to anybody that will give you the most for it, but," he says, "you have got to pay me the location fee if you let anybody else have it."

Q. And he told you over the 'phone that if you sold it to him there would be $75.00 in it, but if you didn't sell it to him that you would be required to pay him $75.00 location fee? A. Yes, sir.

Q. And that was the conversation that you had over the telephone? A. Yes, sir.

Q. And you never saw him any more until after you went down on the train to make your filings, did you?

A. I think not. Not that I remember of.

Q. Now, prior—

A. Say, wait a minute here. He was to meet us, he 'phoned to us he would meet us at Wiley's and locate us, but he never come there.

Q. He didn't come there? **[364—196]**

A. No, sir, Tarpley came there.

Q. Now, you discussed the matter of coming up to these claims with these other gentlemen you have spoken about, before you went, did you?

A. Yes, sir.

Q. And you took your own team and went up to inspect the land. Now, did you have any conversation with these other gentlemen from Brownsville

(Testimony of Henry Blakely.)

that went up to take up these claims, or to visit these claims, before making the filing, with reference to the advisability of taking these claims in a bunch, in order that they might be disposed of mor profitably later on, after you had made final proof? Did you discuss that with these other gentlemen from Brownsville? A. Yes, sir.

Q. And you did that prior to the time you made your filing? A. Yes, sir.

Q. And you did that after you made your filing and before final proof, did you not?

A. Well, I don't remember about that.

Q. But you had discussed it at various times, the advisability of holding these claims in a bunch, in order to realize more out of them? A. Yes, sir.

Q. Now, what is the fact as to whether or not, about the time of final proof, or at any other time—you can state the time, if you know—that some of the same neighbors of yours that went from Brownsville decided to sell their claims and realize the $75.00 from them?

A. Well, as far as I know, I don't. I never talked to **[365—197]** them anything about it until we got out there.

Q. What do you mean?

A. After we had proved up.

Q. After you had proved up? A. Yes, sir.

Q. What did you find to be the case with reference to that matter, after you had proved up, Mr. Blakely? Did some of them want to dispose of their claims right away, some of the—

A. Yes, sir.

(Testimony of Henry Blakely.)

Q. Yes, and was that one of the inducements that made you dispose of your claim so soon after you proved up?

A. Well, Mr. Harrison and I, he and I talked it over, and I went to see Mealey, Judd Mealey.

Q. That was after you proved up?

A. Yes, sir. Well, I went to see Judd about what he thought about it, whether I could make any more than that out of it, whether he would give me any more or not.

Q. After you proved up you went to see Judd Mealey, and see if you could sell it to him to better advantage than you had a standing offer from McKinley? A. Yes, sir.

Q. What did Judd Mealey say about that?

A. He said he wasn't in shape to buy this.

Q. Not in shape to buy this?

A. Yes. He also advised me that if the rest of the boys sold, let mine go. Said, "I would not have one claim in there all by itself."

Q. If the rest of the boys sold, what is that?

A. He says, "If the rest want to sell I advise you to let yours go." **[366—198]**

Q. And that was what influenced you in selling your claim so soon after final proof, because some of the same people who held these claims in a bunch had already disposed of their claims?

A. Of course *I taken* that claim up to make what I could out of it.

Q. And if anyone else had given you more than McKinley would have given you you would have sold to them, wouldn't you? A. Yes, sir.

(Testimony of Henry Blakely.)

Q. And you have felt at all times you had the right to do that? A. Yes, sir.

Redirect Examination.

Q. Isn't it a fact that you went to see Judd Mealey because somebody told you they didn't believe you was ever on your claim at all—that is what you wanted to see him about?

A. I had understood that.

Q. That is what you were inquiring about, wasn't it? A. Yes.

Q. And he told you he didn't believe you had been on it? A. Well, I don't know.

Q. That is, if you had come out as soon as you said you d*u*d he didn't think you had been on it? Isn't that so?

A. I began to get a little dubious maybe I hadn't saw the claim.

Q. You had already given a mortgage, hadn't you? A. Yes, sir.

Q. And already got the money you expected out of it, the $75.00? A. Not when I seen him.

[367—199]

Q. Had not? A. No, sir.

Q. Did you ask for any more money when you signed the deed?

A. No, sir, never asked any more.

Q. How is that? A. Never asked any more.

Q. You talked to Judd Mealey about it about the time you made proof, didn't you?

A. Right after I proved up.

Q. Where? A. Out at Roseburg.

Q. Out there at Roseburg? A. Yes, sir.

(Testimony of Henry Blakely.)

Q. Then you rushed over and signed a mortgage to McKinley?

A. I don't know whether I signed it that day or in Brownsville, that morning, or the next day.

Q. Well, the mortgage appears to have been witnessed before A. M. Crawford, of Roseburg.

A. I would not say.

Q. You never saw him at Brownsville—Mr. Crawford?

A. Never saw him there that I know of, either.

Q. Don't know who he was? A. No, sir.

Q. Now, then, after you had mortgaged that, you didn't think you had gotten out of it all you were going to? Did you think you were going to get more money for it, after you got the $75.00?

A. No, sir.

Q. What did you give a mortgage for, then?

A. Why did we give a mortgage?

Q. Yes. **[368—200]**

A. Why, we gave a mortgage, I suppose, to cover the $400.00 of fees.

Q. Why, you thought the $75.00 was for the land, didn't you? A. No, sir.

Q. What did you think it was for?

A. The $75.00?

Q. Yes. What were you getting that $75.00 for?

A. We—that was the understanding I had, that we—we was to have $75.00—we was to give him $75.00 if he didn't get it after locating, and if he did get it I was to get $75.00.

Q. But he did get it? A. Yes, sir.

Q. And you got the $75.00? A. Yes, sir.

(Testimony of Henry Blakely.)

Q. Yes, but what did you give him the mortgage for? Why didn't you give him a deed?

A. I can't tell you that. We done some funny things up there.

Q. Yes? A. Yes, sir.

Q. You bet you did, and you gave a deed two or three days later and didn't get any money, did you?

A. No, sir.

Q. Do you remember a man named Stratford calling on you up to Brownsville about a year later?

Mr. BANKS.—I don't think that is proper redirect examination.

Mr. McCOURT.—I will ask the privilege of asking it on direct. I meant to ask it before and forgot.

A. Ask the question again, please.

Q. I say, do you remember a man by the name of Stratford, **[369—201]** a Special Agent, coming up and taking an affidavit from you?

A. I gave an affidavit up there, but I don't remember the man's name.

Q. Was McKinley there?

A. Not that I know.

Q. Was Kribs there?

A. Not that I remember of. I didn't know Mr. Kribs at the time. If he was there I didn't know him.

Q. Who told you to go to see Stratford?

A. I don't remember that.

Q. Do you remember I called your attention to that affidavit the other day? How did you happen to make the statements contained in it there, if you

(Testimony of Henry Blakely.)
didn't see McKinley or Kribs, or some of those fellows?

A. I can't tell you. McKinley might have been there. I would not say. I could not say who was there, but I didn't know—Mr. Kribs I didn't know at that time.

Q. Where did you meet Stratford there in Brownsville, on that occasion?

A. Well, I met the man *that taken* them affidavits at the Brownsville hotel.

Q. Who all went there?

A. The whole seven of us, I think.

Q. The seven men that you have named there, mentioned a while ago?

A. Yes, sir—yes, sir.

Q. I call your attention to affidavit of claimant, contained in Government's Exhibit 10, and ask you if you signed that, or if that is your signature. **[370—202]**

A. Yes, I think so.

Q. Did the Special Agent himself take the statements down that you gave him, upon the typewriter, while you were there?

A. I think there was a lady there.

Q. A lady? A. Yes, sir, I think so.

Q. I call your attention to this affidavit, the question there: "Who, if anyone, located you, or showed you this land, prior to you filing on it? A. Dan Tarpley." And the following question, "How much, if anything, did you pay him for his service? A. Fifty dollars," and ask you whether or not you were asked those questions and answered them as

(Testimony of Henry Blakely.)

they appear there? A. No, sir.

Q. You didn't answer that? A. Not that.

Q. You didn't answer that? A. No, sir.

Q. Do you remember that question being asked you at all? A. No, sir.

Q. What? A. No, sir.

Q. Was McKinley there that day?

A. Well, just as I say, he might have been, but I don't recall it to mind that he were. He might have been.

Q. Do you know the lady that was doing the stenographic work? A. No, sir.

Q. Another question: "From what source did you obtain the money with which you paid the Government for this land and the expenses incident to the entry? A. I mortgaged **[371—203]** the land to F. A. Kribs." Did you give that answer.

A. Well, probably I did, but I would not say.

Q. Did you know at that time that you had mortgaged the land to Kribs? A. No.

Q. How could you answer that, then, if you didn't know?

A. That is it. I knew I gave a mortgage or deed, but who to I would not—

Q. Another question: "What disposition, if any, have you made of the land or the timber thereon since you obtained the title thereto? A. I sold the land to John A. Willd." Did you answer that question in that way?

A. I probably did. I would not say.

Q. Did you know at that time that you had deeded the land to John A. Willd?

(Testimony of Henry Blakely.)

A. Well, I thought I did, yes.

Q. What?

A. I thought the deed was kind of made to him. I wasn't sure.

Q. You told me a while ago that it was made to McKinley?

A. I thought, all the time, was made to McKinley, until afterwards.

Q. "How much did you get for it? A. About $800.00." Did you get anything like $800.00 for it?

A. I don't think we got anyway near $800.00, no.

Q. It was $75.00 you got above the purchase paid to the Government?

A. Well, I suppose in that it included the $2.50 per acres and the expenses. I have an idea that is the way it was being put down there.

Q. Yes. And did you answer any such—give any such **[372—204]** answer to the question before a Special Agent, and if so why did you do it, and how did you come to do it?

A. I know there was one question in there I never answered that way.

Q. What is that?

A. Well, that first you asked me.

Mr. BANKS.—About Tarpley?

Mr. McCOURT.—Dan Tarpley, yes.

A. I know that wasn't true. I never was asked that.

Q. "What caused you to sell the land at the time you did? A. I mortgaged the land and thought I would have the money. I didn't have it without borrowing it." Did you answer that way?

(Testimony of Henry Blakely.)

A. Yes, sir, that is true.

Q. Was that correct? A. Yes, sir.

Q. Did you ever intend to put a cent of money of your own in it? A. Yes, sir.

Q. When?

A. When I filed on it, when I located on it.

Q. When you located on it? A. Yes, sir.

Q. Didn't you a moment ago say McKinley told you he would furnish the money and expenses?

A. He said if I didn't have it he would furnish it.

A. You knew you didn't have it?

A. I knew I could get it.

Q. Of course, you could always get the money?

A. Yes, sir.

Q. Did you ever try to get the money?

A. No, sir.

Q. You owned over three hundred acres yourself at that time? **[373—205]** A. Yes, sir.

Q. And you had a bank account?

A. I don't know about that.

Q. It never occurred to you to take a timber claim upon your own responsibility and put up your own money, did it?

A. Well, I wanted to make some money out of the claim. I was born and raised there. I never used my right. A lot of fellows were coming in and taking up all the time, and I would get in first opportunity.

Q. Yes, that is all right, I don't blame you for that. "Q. Did you borrow the money directly from Mr. Kribs personally, or did some one act as his agent

(Testimony of Henry Blakely.)

or your agent in securing the land? A. I got it from Mr. Kribs." Did you answer that question that way? A. No, sir.

Q. Did you answer that question that way up here?

A. No, sir, I don't think I would, because it is not true.

Q. You didn't know Kribs? A. No, sir.

Q. Really hadn't heard of Kribs at the time, hardly? A. No, sir.

"Q. Did you make the sale to Mr. Willd personally, or did someone act as his agent in purchasing the land and paying you for it, and if so, who? A. Mr. S. A. D. Puter." Did you answer that question that way? A. No, sir.

Q. What is that? A. No, sir.

Q. How do you know you didn't?

A. I know I didn't because I didn't know Puter and know **[374—206]** I would not have answered it that way.

Q. Who do you suppose was answering those questions? A. Well, I don't know.

Q. "Q. When and where did you first meet Mr. Kribs previous to borrowing the money from him to pay for the land? A. I met Mr. Kribs at Halsey." Had you ever met Mr. Kribs at Halsey, and were you asked that question and answer it in that way?

A. No, sir, I never met Mr. Kribs in Halsey.

Q. Did you answer that question that way to that agent up there in that hotel?

A. No, sir, I don't think so. I know I didn't because it is not true.

(Testimony of Henry Blakely.)

Q. Now, then, you have lived in Oregon for fifty years. In fact, you were born here, weren't you?

A. Yes, sir, I was born here.

Q. And isn't it a fact that someone saw you just before you and these other fellows went up to Stratford to make this affidavit and told you to answer these questions in the way that you did answer them, and that you, pursuant to that instruction, did answer them as they appear there?

A. Not that I remember of.

Q. Do you mean to tell the Court now that you went up there intending to answer the questions truthfully and did answer them truthfully, as you recall it? A. Yes, I aim to tell the Court that.

Q. Didn't you tell me in my office, Mr. Blakely, Saturday last, myself, Mr. Rabb and Mr. Good being present, without any request from me, that the answers you had given to **[375—207]** the questions before that Special Agent up there had worried you a great deal since that time?

Mr. BANKS.—I object, unless counsel intends to impeach. If that is his intention I want to know it now, otherwise we will object.

COURT.—I think he has a right to ask the questions, whether he intends to impeach or not. I don't know that the Court has authority to compel him to show the purpose of the examination, so long as it is a competent question. He has a right to refresh his memory.

Mr. McCOURT.—I don't think I have a right to show his reputation for truth and veracity, because I would concede that it is pretty good, but I want to

(Testimony of Henry Blakely.)
show he made contrary statements, unsolicited.

Mr. BANKS.—That is the Government's own witness.

COURT.—If it is, he has a right to show he made statements inconsistent with his testimony. The statute gives him that right.

(Question read as follows: Didn't you tell me in my office, Mr. Blakely, Saturday last, myself, Mr. Rabb and Mr. Good being present, without any request from me, that the answers you had given to the questions before that Special Agent up there had worried you a great deal since that time?)

A. No, I think you got that mixed up a little, Mr. McCourt.

Q. What did you say about it?

A. That was in reference to the location.

Q. What?

A. That was in reference to the location, that I had reference. **[376—208]**

Q. What location?

A. Well, whether I was on the claim or not.

Q. That is what you was bothered about?

A. Yes, sir.

Q. That you had made a sworn statement down there, that had worried you?

A. Yes, sir.

Q. Swearing you had been on the land, when you didn't know whether you were or not?

A. Yes, sir.

Q. I see. I have another instrument here, Mr. Blakely, that I wish to call your attention to, which purports to be an affidavit made by you in December,

(Testimony of Henry Blakely.)

1904, before William J. Burns, Special Agent of the General Land Office, and ask you if you signed that?

A. Yes, sir, that is my signature.

Q. How is that?

A. That is my signature.

Q. Do you remember the occasion of that affidavit? A. Yes, sir.

Q. Will you read it please, Mr. Blakely?

A. (After reading.) Well, I think that is pretty near correct.

Q. Pretty near correct. This affidavit you have just read—I will ask you if you told Mr. Burns there, at that time, himself and yourself being present, and possibly some other persons—I will ask you, before, who else was there?

A. I don't know whether Mr. Harrison and I went in together; I don't remember. Mr. Cooley was down here, too. E. B. Cooley. **[377—209]**

Q. Cooley, and who was the man that was taking down the notes? A. I don't remember.

Q. Some man you didn't know?

A. Yes, sir.

Q. I will ask you—where was it?

A. It was up in Mr. Heney's office in—

Q. Upstairs?

A. —the Portland Hotel.

Q. The Portland Hotel. "About January, 1900, as I now remember it, Mr. John Harrison informed me that he had received word from Horace McKinley that he had seven timber claims and wanted to get persons to file on same, that there would be $75.00 in it for us and all necessary expenses. I spoke to my

(Testimony of Henry Blakely.)

son Hugh Blakely and he accompanied us to the land office at Roseburg, Oregon, where we made filings. We shortly afterwards visited the land in the manner recited by Mr. Harrison in his affidavit of this date." Did you tell Mr. Burns that?

A. Well, I have an idea that I did. That wasn't so very long after the transaction happened and it would be as near correct as I could give it now.

Q. And in which you said: "After making final proof and signing these papers"—referring to the note and mortgage—"I was paid $75.00 and expenses, amounting to about $110.00, by Horace McKinley. A few days later Dan Tarpley called on me at my home in Brownsville and had me sign a deed for the land to John A. Willd." Do you remember telling him that? A. Yes, sir.

Q. Now, then, did you go ahead and tell Mr. Burns of any **[378—210]** arrangement by which Mr. McKinley was going to loan you money and you were going to pay him a location fee, and that you could sell to whomever you pleased?

A. Did I tell Mr. Burns?

Q. Yes.

A. Well, I don't remember. Don't it state it there, what I told Mr. Burns? That has been a long time ago.

Q. Well, did you state anything to Mr. Burns in addition to that matter I just mentioned?

A. Besides this?

Q. Yes.

A. Well, I could not say. He asked me a good many questions there. I suppose I stated the facts

(Testimony of Henry Blakely.)

to him—aimed to—to Mr. Burns.

Q. You read this affidavit over before you signed it? A. Well, I suppose I did.

Q. Pronounced it correct, did you?

A. I don't believe I would be foolish enough to sign a thing that—

Q. You were in your right mind at that time, were you not? A. I think so.

Mr. McCOURT.—I offer the affidavit, in connection with the testimony.

Mr. BANKS.—No objection.

Mr. McCOURT.—I merely want to show there is nothing in addition to what I stated.

Marked "U. S. Exhibit 69."

Q. When did you first employ an attorney, Mr. Blakely, to appear in this case?

A. Well, we was served—we was served with some papers **[379—211]** here—we was served with some papers a year, two years ago, three, something of the kind, some kind of papers that we didn't understand part of it, and we went up there and saw Mr. Toozie, an attorney there in Brownsville.

Q. Who *was that* went up there?

A. Well, that is myself and the rest of the boys here that was implicated in this transaction, Harrison—

Q. Those other seven men that you spoke of?

A. Yes, sir.

Q. Your son wasn't among the party?

A. He wasn't there.

Q. He wasn't there?

A. No, sir, there was Jim Cooley, Stillwell and

(Testimony of Henry Blakely.)

Harrison and myself. Mr. Stillwell said he was acquainted with an attorney down here by the name of Mr. Banks and he came down, him and Mr. Harrison, I didn't come at all, I gave him some money to pay Mr. Banks, ten dollars, I think it was, for a fee. I had to have somebody, he claimed, to answer these complaints.

Mr. BANKS.—I don't see the materiality of this. If the Court wants to hear it I have no objection.

Q. Did some one, shortly after the suits were brought, by the name of Jamieson, or some such name, appear up there and inform yourself and the other members of your party, that the land was worth —was very valuable now, and that you were all on warranty deeds and would be liable if the Government canceled the patent, upon your warranty?

A. Well, there was a man by that name up there, yes.

Q. Did he, or some one tell you that? **[380—212]**

A. I met him down at Mr. Cooley's one night. He came there. Mr. Cooley wanted me to come up and we had a little talk there.

Q. Was this before you hired this attorney, Mr. Toozie, or Banks? A. Yes, sir

Q. I will ask you now if he didn't tell you at that time that you would be liable on your warranty deed, as I have indicated.

Mr. BANKS.—Now, if the Court please, that is not fair.

COURT.—What do you claim for that testimony?

Mr. McCOURT.—I claim this fact, that it will show the interest and motive of the party in giving

(Testimony of Henry Blakely.)

the testimony as he is attempting to give it here.

COURT.—To affect his credibility?

Mr. McCOURT.—Yes.

COURT.—Very well.

Mr. McCOURT.—That is, I want to affect his oral statements, which probably inferentially conflict with the real facts apparent in the transaction.

Mr. BANKS.—I don't see how that can possibly affect that question. He is now asking about a conversation that he had with a party that is in no way connected with the case.

Mr. McCOURT.—This party is an attorney in the case, sitting right here, advising and counseling with the defendants—has been gathering testimony ever since the case started.

Mr. BANKS.—An attorney, you say, in the case?

Mr. McCOURT.—Yes, an attorney in the case. He may not **[381—213]** appear of record, but he is in the case.

Mr. BANKS.—We would like to know who he is.

Mr. McCOURT.—Jamieson, sitting right back there.

COURT.—He may answer the question.

A. What is the question?

(Question read as follows: "I will ask you now if he didn't tell you at that time that you would be liable on your warranty deeds, as I have indicated?")

A. Well, I would not say about that. I know he had us worked up there a little.

Q. That was the trouble, the liability that you thought you would be to upon that warranty.

A. We begun to think they would come back on

us. We had given warranty deeds.

Mr. McCOURT.—That is all.

Mr. BANKS.—Will you allow me to cross-examine on these matters that Mr. McCourt took up?

COURT.—Yes.

Cross-examination.

Q. Now, Mr. Blakely, something was about your not knowing whether or not you were on the land. State to the Court whether or not it is not a fact that you thought you were on the land that you filed on under the Timber and Stone Act at—

A. Yes, sir.

Q. —at the time you made your filing?

A. Yes, sir.

Q. Now, with reference to the deed and mortgage that counsel has asked you about, did you read over these deeds and **[382—214]** mortgages at the time you signed them?

A. Well, as to that I would not say whether I did or not.

Q. Well, you were not in the habit of signing papers that you don't understand the nature of, are you? A. No, sir, I am not.

Q. What is your best recollection as to whether or not you read these papers over at the time?

A. I should think I read them over. I should think so, but I would not say positively.

Q. That is your best recollection?

A. Yes, sir, but I would not say.

Q. Now counsel has called your attention to this affidavit that you gave before Mr. Burns. You have stated the same things here to-day that you said in

(Testimony of Henry Blakely.)

this affidavit to Mr. Burns, haven't you?

A. I aimed to.

Q. Yes. Now, did Mr. Burns ask you anything about the other matters that you didn't say anything about in the affidavit, when he took that affidavit? There are certain matters that counsel referred to as not being in the affidavit. Did Mr. Burns ask you anything about those matters?

A. Well, he went through the case pretty thoroughly, I thought.

Q. Well, he put down all of the essential facts in that affidavit that he took, didn't he?

A. Well, I suppose so, that is all I know.

Q. And if there had been anything else you told him he regarded as essential he would have put it there. Now, in this affidavit that you made before Stratford, **[383—215]** you told Stratford the same as you have told the Court here to-day, did you not, in response to—I will read the question and answer. "Did you have any contract or agreement, either express or implied, with Mr. Kribs, Mr. Tarpley, Mr. McKinley, or any other person in regard to the disposition which you should or could make of the land at any time prior to making the final proof? A. No, sir." You said that to Mr. Stratford, did you, at that time? A. I suppose, yes.

Q. You said that here to-say. You never at any time, Mr. Blakely, intended to defraud the Government out of any land, did you? A. No, sir.

Q. You never intended to defraud the Government out of this particular entry? A. No, sir.

Q. What you did in the matter you considered

(Testimony of Henry Blakely.)

was perfectly legitimate and lawful?

A. I thought so at the time, yes, but I have thought different since.

Redirect Examination.

Q. You began to think different about the time that Stratford affidavit was taken, didn't you?

A. Yes, I began to wish I had never seen the claim.

Q. And have been wishing that ever since?

A. Yes.

Witness excused. **[384—216]**

[Testimony of C. J. Reed, for the Government.]

C. J. REED, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

You are the United States Marshal?

A. As yet.

Q. For how long? A. God knows.

Q. Do you know William J. Burns?

A. I do.

Q. Have you in your hands for service a subpoena for him as a witness in this case? A. I have.

Q. Do you know whether or not he is in the State of Oregon?

A. No, not exactly. I don't think he is in the State of Oregon.

Q. Have you made inquiry for him?

A. Yes, I had a letter *from* a week ago from Chicago. He expects to come to the coast, but he hasn't—I haven't heard of his coming.

(Testimony of C. J. Reed.)

Q. Expects to visit you immediately upon reaching— A. Oregon.

Q. —Portland? A. Yes, Portland.

No cross-examination.

Witness excused. **[385—217]**

[Testimony of John Harrison, for the Government.]

JOHN HARRISON, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live? A. Brownsville.

Q. How long have you lived at Brownsville?

A. Practically all my life. 36 years—or 56 years.

Q. Were you living there in 1900?

A. Yes, sir.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Daniel W. Tarpley?

A. Just know him when I see him, is all.

Q. Do you know S. A. D. Puter?

A. A little louder, please.

Q. Do you know S. A. D. Puter?

A. Yes, sir, I thought that was who you mentioned. Tarpley, I know him pretty well. I only know Mr. Puter when I see him. But Tarpley, you mentioned him first, I guess. I am hard of hearing. I know Tarpley very well, but not Puter.

Q. Do you remember being here in Portland, Oregon, about the 29th day of December, 1904?

A. Yes, sir.

Q. And having an interview with Wm. J. Burns,

(Testimony of John Harrison.)

Special Agent of the Government at that time?

A. Yes.

Q. Where was that interview had?

A. Portland Hotel.

Q. Portland Hotel? A. Yes.

Q. Do you recall signing an affidavit there before him at that time? A. Yes, sir. **[386—218]**

Q. I exhibit to you an instrument purporting to be an affidavit made by you before William J. Burns, Special Agent of the General Land Office, on the 29th day of December, 1904, and ask you whether or not that is your signature appended thereto?

A. Yes.

Q. I will ask you to read the instrument and state whether or not that is the document you executed there at that time. That is the instrument you signed there at that time? A. Yes, sir.

Mr. McCOURT.—I offer the document in evidence as an admission of the defendant.

Mr. BANKS.—It is incompetent at this time, if your Honor please. If the witness testified to a state of facts that is at variance to the affidavit he signed there, then it may be competent. You put the witness on the stand and undertake to prove before you examine him, that he has made certain admissions.

COURT.—You offer it as an admission?

Mr. McCOURT.—I merely called him to identify an instrument. He is a party to the suit and appears by counsel. I don't call him for any substantive evidence at all, but to identify a document, the witness to it being out of the state.

(Testimony of John Harrison.)

Mr. UELAND.—The defendants that we represent object to this evidence as incompetent and hearsay, as evidence against them in this case, and as evidence in the case for any purpose; and to support that objection we call attention to the fact that the District Attorney has said that the entrymen are no parties in interest. The District Attorney has proceeded and proceeds in this case to cancel and annul **[387—219]** several patents without having the entrymen here at all, and the entrymen that are here are here only nominally and not for any real purpose. Now, with reference to the case, what use and purpose in getting an admission against the party who is really nominal and has no interest in the case?

COURT.—It is not competent as against anyone except this defendant.

Mr. McCOURT.—Unless we can bring notice to them by some other means.

COURT.—I don't understand what effect it can have in the determination of the case.

Mr. McCOURT.—I have to show the fraud at the beginning. I know the title is not in him. It is in the defendants represented by Mr. Ueland, Governor Lind and Mr. Gearin; and some others.

COURT.—I doubt whether it has any purpose in the case. Certainly not against the defendants represented by Mr. Ueland, Governor Lind and Mr. Gearin.

Mr. McCOURT.—I merely offer it against this defendant.

COURT.—You can put it in against him, as I say,

(Testimony of John Harrison.)
but I don't see what bearing it can possibly have on the case.

Mr. BANKS.—I want my objection as incompetent, irrelevant and immaterial and an attempt to prove an admission from a witness when the witness is present in the court and sworn as a witness.

Affidavit marked "U. S. Exhibit 70."

Mr. UELAND.—It is not admitted against our side.

COURT.—Against no one except this defendant, if he has any interest in the case. **[388—220]**

Cross-examination.

(Questions by Mr. BANKS.)

Mr. Harrison, at the time you signed this affidavit before William J. Burns, was the grand jury in session—United States grand jury?

A. I couldn't say, but I think so. But this was in his office.

Q. Had you—who suggested that you go up to see Mr. Burns about this? A. How?

Q. Did the marshal? A. Yes, sir.

Q. Suggest that you go and see Mr. Burns?

A. Yes, sir.

Q. And make a statement?

A. Yes, sir, he asked me to do it—if I would and I—

Q. Yes, and he accompanied you to the presence of Mr. Burns, did he?

A. He told me he would meet me at the train and go with me if I would go. He asked me if I would.

COURT.—Who told you? A. The marshal.

(Testimony of John Harrison.)

COURT.—What marshal? What was his name?

A. I can't recall his name now.

COURT.—The man on the stand a while ago?

A. I don't think so.

Q. One of his deputies?

A. One of his deputies that subpoenaed me.

Q. Did he meet you at the train?

A. No, he was away at the time, but the next morning I went myself, but he had asked me to go and I told him I would.

Q. Was the statements made in this affidavit, Mr. Harrison, made under circumstances from which it would appear that an **[339—221]** indictment might be returned against you by reason of your having taken this claim and what you did incident to it?

A. There was such talk, yes.

Q. How?

A. There was talk of that kind, yes, sir.

Q. Did Burns—

Mr. McCOURT.—Just a moment. I move to strike out the answer and object to the question and similar questions for the reason that the witness was called merely for identification here and not asked substantive matter. If the counsel wants to examine him about that, he can call him as a witness.

COURT.—He certainly would have the right to find out how he made the admission.

Q. Did Mr. Burns suggest to you anything about the possibility of your being indicted for what you did in connection with the taking of this timber claim?

(Testimony of John Harrison.)

A. Made it in this way, that we could be, every one of us, indicted.

Q. Yes? A. Yes, sir.

Mr. McCOURT.—I didn't catch that answer.

COURT.—Could be.

A. Could be, every one.

Mr. BANKS.—He said, "Could be every one of us indicted."

Q. Did he suggest that to you before he dictated this affidavit which you signed?

A. Yes, sir, that was talked before.

Q. Yes?

A. Yes, there was quite a talk betwixt us there.

[390—222]

Redirect Examination.

Q. Did you make the statements contained in the affidavit because of that statement to you?

A. Did I do what?

Q. Did you make those statements in that affidavit because of the information Mr. Burns imparted to you?

A. No, not exactly, but partly, and I had been kept there for a long time away from home, and was anxious to get away, and that as far—practically, is about right. I just, in running through it—the talk in it—I got acquainted with Mr. Kribs at that time at Roseburg—I didn't; it was later.

Q. You attempted or intended to tell Mr. Burns the truth there when you made the statement?

COURT.—If you want to know what he told Mr. Burns, ask him about it. You have introduced the

(Testimony of John Harrison.)

affidavit as an admission.

Mr. McCOURT.—I will withdraw the question.

Recross-examination.

Q. Do you remember, Mr. Harrison, whether or not you read over the affidavit before you signed it?

A. I don't think I read it myself at all. No, sir.

Q. Who requested you to sign it?

A. Well, I couldn't say just now which one, but there was Mr. Heney, Mr. Burns and another gentleman was in there. There were three, but I couldn't say which one.

Redirect Examination.

Q. Was the other gentleman the man who was doing the writing? A. Sir?

Q. Was the other gentleman the man who was doing the writing? A. Yes, sir. **[391—223]**

Q. He was the stenographer? A. Sir?

Q. The stenographer, the man who did the typewriting?

A. Yes, sir, I think so. He was in there.

Mr. McCOURT.—I may wish to recall this witness, if the Court please.

Witness excused. **[392—224]**

[Testimony of Fred C. Rabb, for the Government.]

FRED C. RABB, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live?

A. My headquarters are in Portland, Oregon.

(Testimony of Fred C. Rabb.)

Q. What is your business?

A. Special Agent of the General Land Office.

Q. And how long have you been engaged in that capacity? A. Well, since June of 1908.

Q. Did you ever meet the defendant in this case, Frank W. Burford? A. Yes, sir.

Q. Where? A. Cheuelah, Washington.

Q. When.

A. Well, I don't believe that I can give the exact date, but it was in the fall, I think, either the fall or winter of 1909.

Q. Did you at that time have any talk with Mr. Burford at that place? A. Yes, sir.

Q. About this case? A. Yes, sir.

Q. Was the substance of the conversation reduced to writing at the time? A. Yes, sir.

Q. I hand you an instrument and ask you if that is the result of the conversation? A. It is.

Q. When was that reduced to writing, as to the time that you had the conversation? **[393—225]**

A. Why, it was reduced to writing at the end of the conversation, and, in fact, while we were engaged in the conversation. It was the consummation of the conversation.

Q. Did you read it over to Mr. Burford when you had completed it? A. Yes, sir.

Q. And did he sign it in your presence?

A. Yes, he read it over and signed it.

Q. Well, could he read your writing there?

A. Well, I explained what he could not read.

Mr. McCOURT.—That instrument, if the Court

(Testimony of Fred C. Rabb.)

please, is offered for the same purpose and for the same reasons as given in the Harrison entry.

Mr. LIND.—In that connection I desire to ask the District Attorney—I do not think it is in evidence yet, if it does not appear by the record you will show that the land to which this relates was conveyed by the party who signed the affidavit many years ago, and had been conveyed long before he signed the affidavit.

Mr. McCOURT.—I will—

Mr. LIND.—We make the same objections that were made by my associates to the last offer, and in addition to that it is shown now specifically by the counsel's admission that the party whose affidavit or statement was offered had no interest in the *res* before the Court. It is clearly hearsay, incompetent against him and everybody else.

Mr. McCOURT.—It is merely offered as against that defendant. **[394—226]**

Mr. LIND.—Now, your Honor, we should have some regard for the record. Does the District Attorney claim that a several judgment might be entered against the various defendants in this case? A money judgment against this defendant? Has he answered? Has he appeared? Has this defendant answered in this case?

Mr. McCOURT.—No money judgment can be returned against him.

COURT.—I don't think it is competent at all for any purpose in this case, because the statement was made by this party after he had parted with the title

(Testimony of Fred C. Rabb.)

and any decree that could be entered would not affect him one way or the other in this case. It is a suit to set aside a patent, with possibly a claim for damages.

Mr. McCOURT.—I offer it for identification, with an exception.

Marked "U. S. Exhibit 71 for Identification."

Mr. BANKS.—I will suggest, if the Court please, that it might be proper to strike out the offer of the affidavit that was submitted to Harrison.

Mr. McCOURT.—There is a difference. It was connected by Harrison. The other man is in default. The Government is entitled to whatever the bill claims against him, without proof.

Witness excused. **[395—227]**

[Testimony of Dan W. Tarpley, for the Government.]

DAN W. TARPLEY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Tarpley?

A. Salem, Oregon.

Q. How old are you? A. Forty.

Q. How long have you lived at Salem?

A. Since 1888.

Q. How is that? A. Since 1888.

Q. What business are you now engaged in?

A. In the timber business—land business.

Q. Who are you associated with in the timber land business? A. No one in particular.

(Testimony of Dan W. Tarpley.)

Q. Do you maintain an office anywhere?

A. No, sir.

Q. Where do you make your headquarters?

A. Well, in the Chamber of Commerce Building.

Q. Whose office?

A. Well, no one's in particular.

Q. What?

A. No office in particular—my brother's sometimes.

Q. Don't have any?

A. My brother's sometimes.

Q. Your brother, Louis Tarpley? A. Yes.

Q. One of the attorneys in this case. You spend quite a bit of time in the office of the defendant, F. A. Kribs, don't you? A. No, I do not.

Q. Do not? A. No, sir, not there—

Q. How long have you been engaged in the timber land business? **[396—228]**

A. About ten years.

Q. Continually?

A. Yes, continuously since that time.

Q. Were you engaged in that business in the latter part of 1904 and during 1905?

A. Yes, I think I was.

Q. Where did you have your headquarters then?

A. Well, I was in Portland most of the time—Salem part of the time.

Q. You say for the last ten years you have been in the timber business?

A. Since 19—well, about ten years—since 1899, the fall of 1899.

(Testimony of Dan W. Tarpley.)

Q. What had you been doing prior to that?

A. Practicing law.

Q. In Salem? A. Yes.

Q. Do you know Horace McKinley?

A. I do.

Q. S. A. D. Puter? A. Yes.

Q. How long had you known Horace McKinley when you first engaged in the timber land business?

A. Oh, I don't know—two or three years—possibly four.

Q. You knew him as a timber land man?

A. Yes, knew him as a timber land man.

Q. S. A. D. Puter—when did you become acquainted with him? A. About the same time.

Q. Do you remember the transaction or transactions of yourself, Horace McKinley and Puter in locating people upon a tract of land in Linn County, township 14, 2 and 3, as they are commonly known among yourselves? A. I do.

Q. When did you first enter upon that transaction? **[397—229]**

A. That was along in January, 1900, in Albany.

Q. In Albany? A. In Albany.

Q. Do you know Fred Kribs? A. I do.

Q. How long after that was it you became acquainted with Kribs?

A. I met Kribs in April, 1900.

Q. Where?

A. Up in Mealey's place—up east of Lebanon—Sweet Home.

Q. Near this timber?

(Testimony of Dan W. Tarpley.)

A. Close to the timber, yes.

Q. What was his purpose in going up there at that time?

A. To look over this tract of timber.

Q. The timber involved in this case?

A. In this case, yes.

Q. Together with 24 other entries that were—

A. There was 57 altogether at the time he came up there.

Q. 57 entries? A. Yes, sir.

Q. How long did he stay up there at that time?

A. I think he went out into the timber one day—stayed out in the timber one night and came back the next day. Was there about two days—two or three days on the trip going and coming; perhaps four days; I don't remember.

Q. Who was in the party?

A. Why, McKinley and Harry Barr. A fellow by the name of Brandenbury came up to Mealey's place. I was there—met them at Mealey's. The next day—I think that was the 3rd day of April—the morning of the 4th McKinley, Kribs and I went out into the timber and came back on the 5th.

Q. Where did Br*na*denbury go in the meantime?

A. He stayed at Mealey's or came back down.

Q. Did they go up with you and Kribs? **[398—230]**

A. Not up to the timber, no.

Q. Were they introduced to Kribs there at the time?

A. I don't know. He was with Kribs when he came.

(Testimony of Dan W. Tarpley.)

Q. What?

A. They came up in the same rig. I never seen Kribs until that time.

Q. They took some timber?

A. They had already filed, yes.

Q. They were going up to look at the timber?

A. I don't know as they were going up to look at the timber there. I don't know what object they had in going up; I presume, though, that was it.

Q. You say that was the fourth day of April Kribs come there?

A. No, the 3d—the 3d day he came there.

Q. The 3d day of April? A. Yes.

Q. You knew or learned at that time that McKinley had been arrested in Albany the day before?

A. No, that is the first I knew of it.

Q. When he came there he told you?

A. Yes.

Q. Did he come all the way from Albany with the party? A. He did.

Q. How did they go on out?

A. They drove. I think they came to Lebanon or Brownsville and came by livery team from there.

Q. Now, then they went back, did you go back ?

A. Yes, I think I went back with them. I am almost sure I did.

Q. Where to? A. Albany.

Q. And from Albany where did you go?

A. I don't know. Don't remember.

Q. What? A. Don't know.

(Testimony of Dan W. Tarpley.)

Q. Were you down to Roseburg about that time? **[399—231]**

A. I was making very frequent trips to Roseburg at that time. I cannot recall the dates.

Q. What was the purpose of your frequent visits to Roseburg at that time?

A. Well, we were filing people on timber land.

Q. This same land?

A. Yes, and taking them back the second time to make final proof.

Q. You hadn't made any final proof up to that time?

A. No, I say I was making frequent trips. I don't think there was ever any had before that. They was made after that. They were made in May —the final proofs—most of them.

Q. Were you in Roseburg following Kribs' visit out there to the lands with McKinley, when the proofs were commenced and the contests were had—the hearings? A. I was, yes.

Q. How many days did those contests consume there?

A. Well, they didn't last very long. I think that they had two witnesses on the stand. Bas Wagner was on, I think, for almost one day. Only a day or two, and then they called the suit off and adjourned —went to Tacoma to compromise the matter with the Northern Pacific. They only lasted a day or two—couple of days perhaps.

Q. Who went to Tacoma to compromise the matter?

A. I think Puter. Puter—I don't know whether

(Testimony of Dan W. Tarpley.)

McKinley went or not—and Pierce Mays and their attorney from St. Paul, and Moulton, the Northern Pacific man.

Q. What occurred now—how long was Puter gone to—

A. I don't know just how many days he was gone.

Q. What occurred when he came back?

A. Well, there were 24 entrymen relinquished.

Q. Who secured those relinquishments? [400—232]

A. I secured part of them.

Q. Who secured the balance?

A. Well, I don't know; I presume Puter and McKinley did.

Q. Did you have to pay them anything to get their relinquishments?

A. Yes, I paid some of them. Some of them would not sign a relinquishment at all.

Q. Well, they all signed relinquishments but three, didn't they? A. Well, I—

Q. George Meyers and wife and sister in law—

A. Three, I know that did not. There might have been more; but I know positively three refused to sign the relinquishments.

Q. Those that did sign, were they paid anything?

A. Yes.

Q. What was the price paid?

A. Well, I don't know; I suppose $15 or $25. I know I went over to Dallas and got one.

Q. Whose was that?

A. Charlie Barr's. Charlie Barr is a brother of Harry Barr. Not the Charlie Barr that is here and subpoenaed in this case.

(Testimony of Dan W. Tarpley.)

Q. Another Barr?

A. Another Barr, yes.

Q. Charles I. Barr that was?

A. Well, I don't know his initial. It was Charlie Barr—a young fellow.

Q. What was his business?

A. At the present time he is City Surveyor here—working in the City Surveyor's office.

Q. Here in Portland? A. Yes.

Q. Who assisted you in securing these relinquishments? **[401—233]**

A. Well, I had no one; the ones I got I had no assistance at all. But I got some of the relinquishments and I think Puter and McKinley got the rest—the only ones that I know.

Q. Where was Kribs during the time you had the hearing down at Roseburg?

A. I am not positive whether he was there or not. I think that he was. I would not say that he was there at the time.

Q. Do you recall that he was there when the proofs were made?

A. Yes, he was there when the proofs were made.

Q. Well, that really was a part of making the proofs, was it not?

A. When the contest was made?

Q. Yes, the proofs following immediately afterwards.

A. I don't know as to that. I don't know whether a day or a week or three weeks afterward.

Q. Or did the proofs follow the relinquishments?

A. Well, I don't know as to that.

(Testimony of Dan W. Tarpley.)

Q. What did the Northern Pacific do when you got the relinquishments?

A. I think the proofs followed the relinquishments. What did they do, did you say?

Q. What did the Northern Pacific do as soon as you got the relinquishments?

A. Well, they scripped 24 claims.

Q. What did they do with the other 33?

A. They withdrew their contest.

Q. I see. What was done with those relinquishments which you procured?

A. I don't know.

Q. Do you know who they were given to?

A. No, I turned—the ones I got, I turned them in to **[402—234]** McKinley and Puter. I don't know what they done with them.

Q. Well, during this time were there any entrymen there waiting to make proof at Roseburg?

A. During what time?

Q. During the time that you were having those hearings down there, and pending the time of your settlement with the Northern Pacific?

A. Well, there was entrymen there, yes. There was Wagner.

Q. What?

A. The entrymen was there—some of them. I don't know how many was there.

Q. What is your recollection as to a few or quite a number?

A. Well, I don't remember. I know we discussed the proposition; said that there was 57 claims when they came up—as to how long this contest would last

(Testimony of Dan W. Tarpley.)

—for the 57 claims and two witnesses to each claim—if they took a day for Wagner it would take quite a while to try the 57 contests. I presume most of them were there. I don't remember now.

Q. Now, had you accompanied any parties to Roseburg that were there to file, prior to that?

A. Yes.

Q. During the filing?

A. I accompanied a number of entrymen when they made their filings, and also when they made their final prooof.

Q. What is the largest crowd that you remember chaperoning? A. Seventeen.

Q. Had you accompanied them both at filing and at proof? A. No, this was at proof.

Q. Oh, that was at proof? A. Yes.

Q. What were your functions there as the director or superintendent of the party?

A. Why, I took them up on the land and brought them out **[403—235]** to Roseburg.

Q. What did you have to do in that connection?

A. After they got to Roseburg?

Q. Yes, and the entire—the matter of their expenses and their entertainment, etc.?

A. Well, I paid—the parties I took in I paid the expenses—the hotel bills and railroad fare.

Q. Now, how long had you and McKinley and Puter been engaged together in the land business—in land transactions, before you got into this one?

A. This is the first timber deal that I was ever in with Puter, and also with McKinley, except with the claim that I took myself—the first transaction.

(Testimony of Dan W. Tarpley.)

Q. That would be sometime before that—six months or eight months?

A. Yes, something like that; four or five or six months.

Q. Did you—you spoke of this arrangement being effected at Albany. Just tell us what that was there—the arrangement at Albany.

Mr. LIND.—What arrangement?

Mr. McCOURT.—He spoke of entering into this transaction at Albany.

Mr. LIND.—With whom?

Mr. McCOURT.—With Puter and McKinley.

A. McKinley and I went from Brownsville to Albany in December of 1899 and registered at the Revere House at Albany and the papers came out and stated that H. G. McKinley, a timber man from LaCrosse—it came out in the Albany papers—was registered at the Revere House. Mr. William Mealey saw it in the paper and came down and told him that the Northern Pacific had cruisers in Township 14 south, 2 and 3 East, **[404—236]** cruising this timber out for the purpose of laying scrip upon it.

Q. Were you present at the conversation?

A. I was present at the conversation. And that they had a set of cruisers up there and that he knew the townships—that he has assisted in surveying—helped survey the townships and it was good timber. So McKinley came to Portland to talk it over. Came to Portland to see Puter, and they came back to Albany. That was in January. I don't remember the date; I think in January, or the latter part of De-

(Testimony of Dan W. Tarpley.)

cember; along about the first of the year—along the latter part of December. And met Mr. Mealey. Puter arrived at the Revere House and I wrote out a contract. It was along about two o'clock in the morning when I got the contract finished, whereby they were to pay Mr. Mealey $10 a claim or $40 a section for—

Mr. UELAND.—Wait a minute.

A. All right.

Mr. UELAND.—Well, we don't object.

A. We was to pay him so much—$10. I think the consideration was $10 a claim or $40 a section. To just merely show him—tell him where the timber was that would cut so many thousand to the acre.

Q. What was that minimum?

A. Well, I don't remember now what it was.

Q. Then what was done?

A. Well, McKinley made a preliminary run up through these townships to look through and see the timber through there.

Q. Did you go with him?

A. No, I went as far as Mealey's, but did not go into the timber. He went into the timber. I did not go with him into the timber. **[405—237]**

Q. All right.

A. And then after he came back and reported that the timber was all right, we located these people on the land.

Q. How many of them?

A. Well, there was—I don't remember the first. I think at first there was about 30—32 or 30—something like that at first. At the time he was arrested,

(Testimony of Dan W. Tarpley.)

seems to me, part of them afterwards—after the time he was arrested. I am not positive about that. Anyway, we filed 57 all together.

Q. Who did the filing?

A. Who did the filing?

Q. Yes. A. The entrymen, I suppose.

Q. I understand, but who was it placed the entrymen? Who got the entrymen to do the filing?

A. Well, I got some of them and McKinley some, I think.

Q. You and McKinley did that part of the work?

A. Yes, with the exception of about three or four Puter got, excluding himself and wife and Mrs. Jacobs. I think McKinley and I got all but four—four or five.

Q. How long a period did that filing extend over?

A. Well, I don't—

Mr. UELAND.—That is a matter of record.

Mr. McCOURT.—Yes, the record shows that. Over about two months, didn't it?

A. You mean from the time of the first filing to making final proof?

Q. No, until they made the last filing.

A. It may have been. I did not think it was that long. I don't remember the time.

Q. It was about five or six weeks, I think. I think February 26th was the last filing.

COURT.—They were all made in January and February. **[406—238]**

Mr. McCOURT.—From January 19th to February 26th.

A. Oh, four or five weeks.

(Testimony of Dan W. Tarpley.)

Q. What became of Mr. Puter in the meantime?

A. Well, I don't know. I don't know. Puter made a trip East. I don't know whether it was during this time or not. He made a trip east after the first filings was made—after we put the first filings on, I know he made a trip east. I don't remember the month. In securing the entrymen he left most of that to McKinley and I.

Whereupon proceedings herein adjourned until April 21, 1910, at 10 o'clock A. M. **[407—239]**

Portland, Oregon, April 21, 1910, 10 A. M.

DAN W. TARPLEY resumes the stand.

Direct Examination (Continued).

(Questions by Mr. McCOURT.)

Were you present at the entire negotiations that were—or rather the formulation of the plan between McKinley and Puter and yourself at the time Mealey visited Albany in February—January?

A. Yes, I think I was.

Q. You were? Do you recall whether those lands are in a body upon which you later filed persons?

A. No, I think not; the townships are in the railroad grant, and that would be all the even sections; the railroad or the Oregon and California had the odd sections.

Q. Was it the purpose to have them as nearly contiguous as possible?

A. I think so. That is usually the case; to select your lands—get them as near in a body as you possibly can and take the good timber.

Q. What were you going to do with the land?

A. Well, I don't know.

(Testimony of Dan W. Tarpley.)

Q. What?

A. I don't know what they were going to do with it.

Q. Well, you was there?

A. Why, at the time the Mealey's—

Q. Yes.

A. Going to locate it or file; locate people on it.

Q. What were you going to do with it when you got it?

A. I don't know. I had nothing to do with the arrangement between Mealey—I had nothing to do with them at all at that time further than writing out the contract. **[408—240]**

Q. Now, how soon after that did you procure or get locators? A. Immediately afterwards.

Q. Well, where did you go to get locators?

A. Well, some in Albany; some in Salem; some in Roseburg; some from Brownsville. I think the first were from Albany and Salem.

Q. Any from Roseburg?

A. Yes, I think there were. They were filed later than the Albany and Salem people.

Q. How is that?

A. I think they were filed later than the Roseburg—or the Albany fellows. I am not positive, but I think so.

Q. Now, then, did you secure Frank Starr of Salem?

A. I think I talked to Frank Starr. I don't know whether I was the first one. I can't segregate the ones that I saw first from the rest. I know quite a number I saw alone.

(Testimony of Dan W. Tarpley.)

Q. Where did you meet Frank Starr?

A. I don't remember. It was in Salem.

Q. Where did you usually meet him when you wanted to see him?

A. Sometimes on the street; sometimes I met him in the bar.

Q. In where?

A. I think he worked—did at one time, anyway, as a bartender in Salem.

Q. Whose saloon?

A. At that time I don't know as he was working at all. I think he worked for—I am not positive—Mel Hamilton—Bill Anderson. That was his profession, anyway.

Q. Clarence Lewwill, who was he?

A. I don't remember him.

Q. Who secured H. C. Barr, the fellow at Albany?

A. I think I secured Barr—Harry Barr and his brother. **[409—241]**

Q. What was his brother's name?

A. Charlie.

Q. Where was he living then? A. Albany.

Q. What was Harry doing?

A. Well, I don't know what he was doing at that time. He was a surveyor.

Q. He was a surveyor?

A. Yes—profession.

Q. Afterwards?

A. No, at that time. His father was a surveyor and his son had been doing some surveying work.

Q. What was Charlie Barr doing?

(Testimony of Dan W. Tarpley.)

A. I don't—he was—shortly after that, anyway, was working in a woolen mill at Dallas. I don't know at the time. He was working at the woolen-mill at Dallas at the time I got his relinquishment.

Q. Charles Brochett?

A. He was a waiter at the Willamette Hotel.

Q. Did you secure him?

A. No, I think McKinley did. I think McKinley secured him. I may have talked with him, however.

Q. Brandeberry?

A. He lives at Albany.

Q. What was he doing in Albany?

A. I don't know.

Q. Did you secure him?

A. I don't think I did.

Q. Charles Farrell?

A. He was from Albany.

Q. What was his business?

A. I don't know what his profession was.

Q. Was he any relation to Newt Farrell? [410—242]

A. No.

Q. *H*ohn L. Green—what was he doing?

A. I think he was working at the woolen-mills in Salem.

Q. Did you secure him?

A. I made a trip—went out to his house, the best I can remember, and had a talk with him. I don't remember whether it was before he filed or after he filed.

Q. Jay S. Phillips—did you induce him to file?

A. No.

(Testimony of Dan W. Tarpley.)

Q. What was his business?

A. I don't know what he was doing then. He worked at the Willamette Hotel afterwards. I don't know whether he was working there then or not; and he was also in the saloon business in Salem.

Q. In what? A. Saloon business.

Q. Sell Finley?

A. Sell Finley? I think he lived out in the country there some place from Salem.

Q. Ed Finley—did you secure him yourself?

A. No.

Q. That was McKinley?

A. McKinley secured him.

Q. Now, after you would have a talk with one of these fellows about filing, what did you do?

A. Took him to the Land Office at Roseburg.

Q. What did you do—who paid their expenses?

A. The time that we took Frank Starr and Brochett and most of the fellows you just named there, why, McKinley paid the expenses.

Q. Was he along with that party as they went?

A. I met him at Albany—I got on the train at Albany. He got on the train with Jay Phillips and a number of the boys **[411—243]** from Salem. I got on at Albany and we went to Roseburg.

Q. How many parties did you take to Roseburg yourself, to file?

A. I never took any alone.

Q. McKinley was always along?

A. McKinley was always along. I took a party alone one time to make final proof.

Q. Yes. I will get to that later. Well, what did

(Testimony of Dan W. Tarpley.)

you do after you would go up to Albany there—you and McKinley take a party to file—then what would you do? A. You mean Roseburg?

Q. Roseburg, I mean.

A. Well, have them make the entry on the land—took them to the Land Office and brought them back.

Q. Paying their expenses both ways?

A. That was the agreement—to pay the expenses.

Q. With them. You paid the hotel bills?

A. Yes.

Q. How much were you to pay them in addition to their expenses? A. $75. $75 to $100.

Q. When was that $75 to be paid?

A. At the time of final proof.

Q. Now then, when it came time to make final proof, how did the entrymen become apprised of the fact that it would be time?

A. Well, I suppose they received notice.

Q. From whom?

A. Well, the customary way, I suppose, is from the paper that the notice was published in. However, they may have been notified by McKinley or Puter. **[412—244]**

Q. Do you remember notifying a number yourself? A. I don't know as I did.

Q. How did you find a bunch ready to go—for instance, when you took the seventeen?

A. We knew at the time the date was set to make final proof.

Q. Did they all meet together or how did you pick them up?

(Testimony of Dan W. Tarpley.)

A. I suppose went and got them.

Q. You are sure it was 17, or 16 you took down there at one time—no, that was filing.

A. That was filing.

Q. Yes, I see. Well, what was the operation that you went through when you got them gathered up?

A. Well, took them back to Roseburg and had them make final proof.

Q. How did you provide for their transportation?

A. Well, McKinley attended to that.

Q. You knew how it was being done?

A. I understood he made rates—had rates some way or other.

Q. Made rates with the Southern Pacific Company? A. I don't know what way.

Q. How?

A. I don't know what way. I know we got rates—reduced rates some way, there, by taking a number at a time—rates at that and also at the hotel.

Q. Now, when you got to Roseburg, what occurred?

A. Well, the entrymen we took to the Land Office to make final proof.

Q. Did you have them meet you some place else before you come to the Land Office?

A. Not that I know of. After they got to Roseburg, why, the duties was to make final proof—was about ended. I did **[413—245]** not have much to do.

Q. Well, you cautioned every one of them, or

rather, you advised them of the questions they would be asked? A. I did not.

Q. Didn't you?

A. I don't remember anything about it.

Q. Didn't you, every one that you had, caution him that he would be asked questions—whether or not he had made a contract to transfer the land to anybody else, or by which anybody else was to get an interest in it?

A. I may have done that, but I don't remember of it. I may have made him acquainted with the nature of the affidavit that he had to fill out before the Land Office.

Q. That was when you first went up to file?

A. I don't know. I say I don't know that I did. I may have.

Q. You don't know? That was the customary practice you went through at that time in handling—

A. At that time had not established any custom at all. My first—

Q. Just establishing one?

A. Just establishing one? That was the first parties that ever I had taken up or was interested in, on filing of timber claims.

Q. Where did you write out those Timber and Stone Sworn Statements? When you got to Roseburg or before you got there? A. What?

Q. When did you make out those Timber and Stone Sworn Statements? When you got to Roseburg or before you went there?

A. I don't know as I wrote any of them.

(Testimony of Dan W. Tarpley.)

Q. I will call your attention to some of these and see if you did actually write them?

A. I don't know. **[414—246]**

Q. Well, I don't either. I call your attention to Timber and Stone Sworn Statements of Charlie Barr and ask if that is your handwriting?

A. No sir.

Q. You didn't write that? A. No, sir.

Q. H. C. Barr? A. No.

Q. Whose writing is it?

A. Well, I don't know. It isn't mine.

Q. Whose writing is that of Hugh Blakely?

A. Not mine.

Q. Do you know whose it is? A. I do not.

Q. Well, probably you didn't make these Timber and Stone Sworm Statements?

A. I am pretty sure I didn't.

Q. They were made in duplicate, were they not, at that time—or are now, for that matter?

A. I suppose so.

Q. Now, after the entryman had completed his testimony and the witnesses had given their testimony in the several cases, what—who made the payment of the money over to the Receiver?

A. I don't know.

Q. Do you recall that that was paid—usually paid—the entire bunch of people paid by one check?

A. No, I do not. I don't know anything about the money transaction part of it at all.

Q. Well, after they had completed the proof, what did you do with them?

(Testimony of Dan W. Tarpley.)

A. They went back home, I guess. I only—after they—I think that after they made final proof they went to Shupe's office and made a mortgage—most of them, or all of them I guess. **[415—247]**

Q. You went along, didn't you, mostly?

A. No, I don't know as I did. I was along part of the time.

Q. Made a mortgage for how much money?

A. $600.

Q. In favor of whom? A. Fred A. Kribs.

Q. That was done in each case?

A. Pretty sure it was.

Q. Was Kribs there in Shupe's office?

A. I don't remember whether he was there or not.

Q. Was he about the Land Office there when you were making proof on those different days while you were there?

A. He was in Roseburg at that time, I think, but I don't know as he was in the Land Office. I was not in the Land Office at the time those parties were making final proof, myself.

Q. Well, did they make any deed at that time, too? A. Not that I know of.

Q. Don't you remember that each one that was not married made a deed—in fact, those that were married made a deed?

A. No, I don't know.

Q. What other matter was there connected with the transaction that occurred right there as soon as they made their mortgage?

(Testimony of Dan W. Tarpley.)

A. The only thing that I know, two or three of them—I don't remember—one or two or three that I paid $75 to.

Q. Who furnished you the money?

A. McKinley.

Q. And who attended to paying the balance of them?

A. I don't know. I suppose Puter or McKinley did.

Q. They were both there? A. Yes.

Q. Both provided with funds to pay those that located for them, the money? A. Yes.

Q. How is that? **[416—248]**

A. I think so. They had—they paid the rest of them. I suppose they had the money or they would not have paid them.

Q. They were all paid there in Roseburg at that time, were they not?

A. I don't know whether they were or not.

Q. You don't know? A. No.

Q. Was that as you understood it at that time?

A. Well, I understood that they were to be paid at the time they made final proof. Whether they were paid at that time or not, I don't know. I only paid—I think the only party I remember paying was Ira Pilkington, but there might have been one or two more I paid. I don't remember. I had very little to do with that part—handling the money part. In fact nothing.

Q. Afterwards you got a deed—two or three days afterward? from some of the married men, did you

(Testimony of Dan W. Tarpley.)

not? That is how you got their wives to sign the deed?

A. I remember the fact of going over to Brownsville and getting some deeds from Brownsville.

Q. That was from John Harrison and Blakely?

A. Yes.

Q. Henry Blakely and a fellow by the name of Cooley? They were all married?

A. I don't remember whether they were or not. I remember going over to Brownsville to get the deeds.

Q. The reason for going there was because the wives were not present in Roseburg. They were were married men.

A. Well, I don't know as to that.

Q. The point I am getting at is, did you pay any money when you got those deeds? A. No.

Q. The financial transaction had been concluded at the time **[417—249]** of making the mortgage.

A. I don't know whether it was or not, as I never handled the financial end.

Q. How long after they made proof was it that you went up to get them—how many days after?

A. Perhaps about a week, I don't remember. A few days.

Q. Just a short time after? A. I think so.

Q. Were you acting as Notary Public at that time? A. Yes.

Q. Commissioned to act as a Notary Public?

A. Yes.

Q. Was McKinley and Puter also?

(Testimony of Dan W. Tarpley.)

A. I think they were.

Q. You know C. A. Smith? A. No.

Q. Never met him? A. Never met him.

Q. At any time? A. No.

Q. Either prior to this transaction or since?

A. Never remember seeing him in my life.

Q. What was done with those deeds and mortgages as soon as you got them?

A. I turned them over to McKinley.

Q. Do you know what he did with them?

A. No.

Q. Now, was McKinley's hearing on the criminal case in Albany before or after you made the settlement with the Northern Pacific?

A. Well I don't know. I could not say as to that. I don't remember the date of the hearing or the date of this settlement with the Northern Pacific.

Q. The settlement was made with the Northern Pacific before **[418—250]** any proofs were completed, was it not?

A. Yes, I think that settlement was made in Tacoma.

Q. Did Fred Kribs go along with the party to Tacoma?

A. I don't know whether he did or not.

Q. Well, now, some of those proofs were made in April, and they continued on until May 18th or 16th. Was Mr. Kribs there in Roseburg all this time when you were making those proofs?

A. I could not say as to whether he was or not.

(Testimony of Dan W. Tarpley.)

Q. Well, did you see him there about that time, frequently?

A. I saw him in Roseburg several times, but I think he was in Roseburg—appeared quite a while there—he was in Roseburg quite a time, off and on.

Q. Well, when you were not chaperoning entrymen, who were you with, usually?

A. McKinley.

Q. Puter too?

A. Well, some of the time. McKinley and I were together most of the time.

Q. Was Kribs running around with you more or less? A. No.

Q. Where was he stopping?

A. McClellan House.

Q. That is the hotel there? A. Yes.

Q. Did you stop there too? A. Yes.

Q. Also McKinley and Puter? A. Yes.

Q. How many of the entrymen stopped at the McClellan House?

A. I don't know how many. There was a while that we made rates—McKinley did, rather—made rates at the hotel for parties—for those timber men, and there was a part of them later that stopped at some other hotel. They wanted to charge full rate—regular traveling men's rates for the entrymen, and afterwards we took the entrymen to some other hotel. **[419—251]**

Q. What other house?

A. I don't know the name, down close to the depot.

(Testimony of Dan W. Tarpley.)

Q. Called the Depot Hotel, was it not?

A. I don't know the name. There close to the depot.

Q. After you changed arrangements you took all the entrymen to the Depot Hotel?

A. I don't think I was ever in that hotel in my life.

Q. You directed them where to go?

A. No, I didn't.

Q. You didn't do that? A. No.

Q. Now, you were a proof witness, were you not, upon nearly every—the most of these entries?

A. Quite a number of them, anyway. I don't know how many.

Q. Did you have anything to do with arranging for the publication of notice with the newspaper?

A. No. I was with McKinley when he made the arrangement.

Q. When was that made, with reference to the time you made your filing?

A. I don't know as to the date. I remember going to the newspaper office with him in Brownsville. He made the arrangements with the editor. His name was Cavendar.

Q. Cavendar? A. Cavendar, yes.

Q. What arrangements were made there?

A. I think that he be given terms on the entrymen. For quite a number of them he got reduced rates for so many. He made some arrangements with him. He had done advertising before with the paper, other claims he had filed on. I was with him

(Testimony of Dan W. Tarpley.)

when he made the arrangement, but don't know just what it was.

Q. Did he give him the list at that time that were to be **[420—252]** published?

A. I don't know whether he gave it at that time, or not, or later.

Q. That you say was shortly after you had filed the first lot of people?

A. I don't remember as to the time. I can remember of going with him to the office, and he was talking with Cavendar. I have known Cavendar for a good many years.

Q. Well, after—do you know when the payment was made, the payment to Cavendar or the paper?

A. No, I don't.

Q. The firm was Cavendar and Brown, was it not? A. Yes, Cavendar and Brown.

Q. That contract that you made with Mealey was—did that include the contract of cutting the trails up there, or was that later?

A. That was later.

Q. That was a later arrangement. What was the purpose of cutting those trails?

A. To be easy to get into the timber.

Q. Easier for whom?

A. Well, anybody that went into the timber.

Q. Who was going in?

A. Anybody that was interested in it.

Q. Cut it so that you and McKinley could walk around and view the timber, or who were you going to take in there?

(Testimony of Dan W. Tarpley.)

A. Well, anybody that would be interested in a tract of timber.

Q. Anybody that would be interested in securing the tract?

A. Wanted to look at the tract, yes, make it easy, so **[421—253]** that we could go in with a horse, and *for own* convenience too, I suppose.

Q. Did you participate in cutting the trails?

A. I did.

Q. What? A. Yes, sir.

Q. How long were you up there?

A. Oh, I don't know, about ten or eleven days, I guess.

Q. How far after filing was that, before you started to cut the trail?

A. It was along the first of March, some time, the middle of March. I don't know. It was in March, anyway.

Q. You started on that trail business immediately, didn't you, after you started to file and Puter went east?

A. No, the trail wasn't started along—I think some time in the middle of March.

Q. Now, what was the date you said Kribs first got in there? A. The third day of April.

Q. How do you fix that date? A. The date?

Q. Yes. A. By a diary.

Q. Whose diary is that? A. My own.

Q. Have you got the diary? A. I have.

Q. Did you keep a diary at that time?

A. I did.

(Testimony of Dan W. Tarpley.)

Q. Let's see it.

A. (Witness hands book to counsel.)

Q. You and McKinley both kept a diary?

A. I have kept a diary for several years, yes.

Q. What—how do you find your date there? I can't find it. **[422—254]**

A. Well, I can find it. Here is April 3. At Mealey's. Second at Mealey's, and third, Kribs, Brandeberry and Barr arrived.

Q. That is the way you know that. It was on a Tuesday, wasn't it? A. Yes.

Q. This diary was merely kept to indicate where you were at certain days. You didn't make any extended memoranda?

A. No, no. I kept a diary for several years during that time, before and after.

Q. Now, does this give the date when Puter and yourself and Tarpley got into Albany there?

A. From Mealey's?

Q. With the Mealey's.

A. Yes, Puter arrived there on the 8th of January.

Q. How is that? A. Eighth of January.

Q. Eighth of January.

Cross-examination.

(Questions by Mr. LIND.)

Was that the first time you seen Puter?

A. The first time I ever—the first time I ever met him, you mean?

Q. Yes.

A. No, I had met him before that. Just knew

(Testimony of Dan W. Tarpley.)

him, acquainted with him, was all.

Q. Was that the first time you had ever talked land business with Puter?

A. The first time that ever I remember talking land business with Puter at all.

Q. The eighth of January, 1900?

A. Yes, the first time ever I remember. I might have **[423—255]** before that, while he and McKinley were together. I might have talked a little something about lands. I wasn't interested in the land until just shortly before that.

Q. How did you happen to meet Puter on that day?

Q. Why, McKinley, I think, came to Portland. Either came to Portland or 'phoned for me to come to Albany. I think he came down to Portland. I am not positive.

Q. How did you get the information?

A. Of what?

Q. Of Puter's coming.

A. Well, talked it over with McKinley. He was going to send for him.

Q. Oh, yes, that had been understood between you.

A. After we first met Mealey, McKinley decided to get Puter up to Albany and talk with Mealey a while. He was over—

Q. That is when you concluded to go into the locating business? A. Yes, sir.

Q. Had McKinley been a locator prior to that time? A. Yes, quite a while before that.

(Testimony of Dan W. Tarpley.)

Q. For how long, if you know?

A. Well, I had known McKinley perhaps three or four years before that. He had been in the business for a number of years.

Q. You said in your direct examination that you made a hurried visit, you and McKinley, to Portland to see Puter, or called him up hurriedly. What was the occasion?

A. Why, knowing that the Northern Pacific had their **[424—256]** cruisers in this tract of land, townships.

Q. What townships?

A. 14 south, 2 and 3 east—for the purpose of laying—

Q. Ranges 2 and 3 east? A. Yes.

Q. Township 14?

A. Township 14 south, ranges 2 and 3 east. They had their cruisers in there for the purpose of picking out the good sections and laying scrip on them, Northern Pacific Scrip. That is what Mr. Mealey told us when he came down, that cruisers were in there then.

Q. Then Mealey gave you the first information in regard to this land, did he? A. He did.

Q. Had the lands been but recently surveyed, or surveys come in?

A. I don't know as to that. He told us that he knew what the land was. He helped survey them himself.

Q. What conversation did you and Puter and Mc-

(Testimony of Dan W. Tarpley.)

Kinley have on that occasion? What was the arrangement?

A. Well, the arrangement—it was a contract.

Q. Were you a party to the arrangement between McKinley and Puter? A. No, sir.

Q. Who did you work for?

A. For Puter and McKinley both, most for McKinley. All the transaction was done with McKinley.

Q. Do you remember the arrangement between McKinley and Puter?

A. No, I never heard the arrangement between Puter and McKinley. I heard the arrangement between Puter and McKinley **[425—257]** and the Mealeys. In fact, I wrote that contract out myself.

Q. What was the contract?

A. Why, the nature of the contract was for the information that Mr. Mealey would give of the sections—claims, that they would pay him so much a claim for every section of good timber. That is, I think there was a stated—a claim that would cut so many million feet a claim, or over, he would receive—

Q. He was familiar with the lands and he was to point out the lands, so that it—

A. Of goos lands, of good sections.

Q. Of good sections. Now, what was the arrangement between Puter and McKinley with reference, so far as you heard it discussed, with reference to locating claims?

A. I don't know exactly what the arrangement between them was, only, that we were to file these—get

(Testimony of Dan W. Tarpley.)

these entrymen to file on the timber land and charge them—charge $100 location fee.

Q. Were they to charge $100 location fee?

A. Yes.

Q. What were your instructions when you—when it was suggested to you to solicit entrymen?

A. My instructions?

Q. For locations.

A. My instructions were to secure the entrymen, take them to Roseburg and file them on the claims.

Q. What were you to tell the entrymen, if anything?

A. The entrymen—that they were to receive—it would be at least $75 for the claims—for taking up the **[426—258]** claims. That they would furnish the money. These parties didn't have the money to pay—that the money would be furnished—they would get some one to furnish the money and take a mortgage on the claim.

Q. Was there anything said about a conveyance or a deed? A. Nothing whatever.

Q. Anything said about selling the claim?

A. No, sir.

Q. Did any of the entrymen—did you refer any of the entrymen to Mr. McKinley for fuller discussion or explanation of the plan?

A. Well, I don't remember any particular case. I know that we talked—that the two of us together afterwards talked to some of the entrymen that I had seen. We would both go back and both of us talk to him. **[427—259]**

(Testimony of Dan W. Tarpley.)

Q. How did you tell the entrymen that that money would be raised?

A. Told them that we would find somebody that would loan the money on the claim.

Q. Did you state what amount you expected to obtain on the claim by way of mortgage?

A. No, I don't know as I did.

Q. Did you say to them what the location fee would be? A. Yes, sir.

Q. What did you say it would be? A. $100.

Q. Did you say that you expected to get enough money so that you would get at least $100 out of it—you and McKinley and Puter—and that they would get how much?

A. They were to get at least $75. I didn't state that I was to get anything out of the $100 location fee. I was not interested in that part at all—that is, received no—was not to receive any certain percentage of the location fee or any moneys made out of it. I was merely paid by Puter and McKinley.

Q. Did you, in any conversation that you had with any man or woman that you located, say anything about selling the land? A. No, sir.

Q. At any time? A. No.

Q. When the final discussion about selling the land was had, if any, were you a party to that?

A. No, I had nothing to do with it.

Q. Did you help negotiate the purchase of any claim? A. No, sir.

Q. That you recall? A. No, sir.

Q. Who did, then, if anyone? **[428—260]**

(Testimony of Dan W. Tarpley.)

A. Well, I don't know.

Q. McKinley or Puter did?

A. Perhaps both of them, I don't know.

Q. You don't know?

A. No, I don't know who negotiated it.

Q. Did you see the Northern Pacific cruisers in this tract of land when you were up through there?

A. I didn't go any further than Mealey's place, and McKinley and Mealey went out into the timber, and I stayed at the house until they came back. They went out and stayed out one night.

Q. I mean, when you were cutting the trail?

A. Oh, no, there were no cruisers in there at that time.

Q. There were no cruisers there?

A. Not at that time, no.

Q. Did you go up with parties as far as Mealey's, who intended to make filings, to examine the lands?

A. Yes, I went up there one time with 17 parties. That was before they made final proof.

Q. Before they made final proof. Do you remember seeing Mrs. Beeman going up there?

A. I remember seeing Mrs. Beeman at a place this side of there called Sweet Home, where I stopped for dinner. I think the same time I took these parties up. I made several trips in there—14 or 15 trips in a short time. I remember meeting her at Sweet Home one time.

Q. Who was with her, if you recall?

A. I think Mr. Beeman was with her.

Q. Did you have any talk with Puter about this

(Testimony of Dan W. Tarpley.)

land arrangement, particularly? A. No.

[429—261]

Q. Did you ever discuss the matter with him directly at all?

A. Oh, I don't remember just exactly what it was. I was present lots of times when he and McKinley were discussing the matter. Discussing the matter of readvertising it one time.

Q. When did you first hear the name Kribs mentioned? I think you said that you had never met Kribs until April 3d.

A. Well, I don't know that I ever heard his name mentioned before that day—April 3d.

Q. How long did you say Kribs remained up there at that time?

A. Well, I can tell exactly by referring to this diary of mine.

Q. Well, refer to your diary.

A. All right. On Tuesday, April 3d, McKinley and Kribs, Puter and Brandeberry arrived. That is, at Mealey's place—about eight miles from the land—seven or eight miles. On Wednesday, the 4th, McKinley, Kribs and I went into the timber—Puter was along—Puter, I think, went into the timber on that trip, but—

Q. How?

A. I think Puter was on that trip, but I have it here McKinley and Kribs and I went into the timber. That is Wednesday, the 4th. The 4th in the timber, 5th returned back to Mealey's. Was in the timber—stayed out one night, went out one morning—two

(Testimony of Dan W. Tarpley.)
days and a night.

Q. You say that was—was that entry made at the time? A. Made at the time, yes.

Q. Is that the first time that you met Kribs?

A. That was the first time I ever met Fred A. Kribs—the 3d day of April, 1900.

Q. You said McKinley gave you some money to pay some of **[430—262]** these entrymen. Do you remember how many?

A. No, I don't. The only one that I can remember I paid was Ira Pilkington.

Q. Was that after or before the mortgage had been made?

A. I think it was at the time the mortgage was made—about that time. Perhaps it was right after.

Q. Now, in procuring these entrymen, did you solicit them to make these entries? What did you say to them—how did you approach them?

A. Well, I usually approached them by asking if they had ever used their timber right—taken up a claim under the Timber and Stone Act. If they said no, I told them I knew where there was some good timber claims that were vacant, and they wanted to know what it would cost to take up a claim. I told them $400 to the Government and the expenses of two trips to the Land Office and perhaps a trip to the land.

Q. What else?

A. And if they said they didn't have the money to take up a claim I told them that if they would file on a claim that McKinley and Puter would furnish

(Testimony of Dan W. Tarpley.)

the money for them to make their final proof. Would loan them the money—get the money for them.

Q. Yes?

A. And if they said all right, I said that there would be at least $75 in it for them. If they wanted to take up a claim all their expenses would be paid to and from the Land Office, railroad fare, hotel bill and filing fees, and that there would be at least $75 in it for them. That they would give a mortgage on the claim—add $100 location fee to the price that was paid to the Government and the expenses, and **[431—263]** take a mortgage on it. If they said yes, we took them to the Land Office and filed them.

Q. Was that all there was to it?

A. All at that time that I remember.

Redirect Examination.

Q. How far is Sweet Home from this land?

A. Sweet Home must be—oh, from the land, Sweet Home must be 20 miles—something like that.

Q. That is where you saw Mrs. Beeman?

A. Yes. Well, it is from 15 to 20 miles—something like that.

Q. What did you get out of the transaction?

A. Well, I don't know exactly how much I got out of it. The arrangements I had for my compensation was that McKinley told me if I would help out in the matter in getting these fellows—taking them to the Land Office and taking them out to the land—that he would see that I was well paid for it. So I was paid the different sums stated at different periods. I don't remember what it was. Maybe a

(Testimony of Dan W. Tarpley.)

few hundred dollars.

Q. McKinley furnished you with money right along from time to time? A. Yes.

Q. Had been for some time previous?

A. No.

Q. Some months previous to that?

A. No. He only furnished money—I sold him a timber claim up in 14—2; 15, I think it was; 15—2, I had taken up myself.

Q. You and he had been sporting around Salem there for several years together, hadn't you?

A. No, sir. **[432—264]**

Q. You hadn't?

A. No, I knew McKinley three or four years before that, but I really never was with him very much until along in the Fall—early in the Fall of 1899. I had met him—met him in Salem and Portland. I was not very well acquainted with him until the Fall of 1899.

Q. From that time on you continued to operate with him up until practically the present time?

A. Well, yes.

Q. Except when he was where he could not operate? A. Yes.

Q. Now, then, the people that you approached were people whom you knew had no money?

A. No, I didn't know it. Some of them were and some wasn't.

Q. Most of them were not?

A. Well, most of them did not have the money to take out the claims here.

Q. As a matter of fact, you knew that before you

(Testimony of Dan W. Tarpley.)

went to see them?

A. Well, I didn't know; never inquired.

Q. For instance, a fellow by the name of Barr over at Albany—Toppy Barr, they called him—you knew he didn't?

A. I didn't know he didn't have any. He could get some. His father—his folks were well fixed.

Q. You knew he was what they call a dope fiend, there? A. Yes, he was.

Q. You knew Frank Starr did not have money?

A. No, I didn't know he didn't.

Q. Well, you thought he didn't?

A. I didn't know.

Q. What? **[433—265]**

A. I didn't know whether he had any money or not.

Q. And Charlie Barr, there at Salem, working on a hop ranch—you knew he didn't have any money?

A. No, I didn't know it.

Q. Didn't know that?

A. No. In fact, I didn't get Charlie Barr. Never talked—

Q. No, I guess McKinley got him. And Pilkington, didn't you know he didn't have money?

A. I thought McKinley got—I am not positive.

Q. Well, you made it a point to approach men who would have to get the money from you fellows, didn't you?

A. No, otherwise we would not have gone to George Meyers and wife, and Mrs. Lunn, his sister in law.

Q. You put him up as a shining example. He

pulled out of it, didn't he?

A. No, he happened to be a party who relinquished to the Government. He had nothing to say. In fact, it was drawn, selected without their consent. As to whether they would go on and prove up or not. They would not have a chance to say. It was the Northern Pacific and Puter decided on that—who should relinquish and who should prove up.

Q. The entrymen had no choice about that?

A. No.

Q. How could Puter relinquish for the entrymen? A. What is that?

Q. How could Puter relinquish for the entrymen?

A. Get them to relinquish. Some of them refused to relinquish. Explain the plan to them.

Q. Who refused, now?

A. Meyers refused.

Q. And his wife? **[434—266]**

A. And his sister in law.

Q. And his sister in law. They were the only ones who did refuse?

A. They didn't make final proof.

Q. No, their entries were cancelled. They would not go on.

A. I don't know whether they were the only ones that refused or not.

Q. All the rest relinquished, didn't they?

A. I don't know.

Q. What?

A. I think so, but am not positive.

Q. Those that did relinquish, you paid them part

(Testimony of Dan W. Tarpley.)

of what you agreed to pay them before any location, to get them to relinquish? A. Yes.

Q. Some of them wanted you to make up the whole $75, didn't they?

Mr. LIND.—I think that is too general.

Mr. McCOURT.—Well, I can't designate any of them. I don't know which one it was. These fellows are the only ones who know, and I don't know whether they remember.

A. I think so. I don't know whether they wanted the full amount or not, but I know some of them wanted—some fellows in Salem, Brochett and Starr, that relinquished—I am not positive whether they relinquished or not. I know they refused to relinquish unless—I think the most of them got $15 or $25. I don't know what they wanted. They wanted a sum larger than that, anyway. Maybe $50 or $75 or $100. I don't remember what amount it was.

Q. Now, then, when you took those deeds, you didn't make— **[435—267]** there was no negotiation about it, was there; that was simply the consummation of the original understanding?

Mr. LIND.—I object to that. I dislike to interrupt. He has testified that he had nothing to do with the taking of the deeds. Knew nothing about it.

Mr. McCOURT.—He did take a good many.

Q. You were present when a lot of those were executed there in Roseburg, weren't you?

A. I think I was a witness on some of them.

Q. Yes. Quite a number.

A. I don't know how many.

Q. Now, there was no negotiation regarding mak-

(Testimony of Dan W. Tarpley.)

ing that deed. It was signed as a matter of course by the man when he got $75?

A. I don't know as to that.

Q. You didn't see any negotiations carried on?

A. No, I didn't. Those I witnessed I had nothing to do with the arrangement. There was no negotiations in the signing of these.

Q. They got $75 right along there?

A. Well, I don't know. I didn't see that. I never saw any of them get $75, as far as that is concerned, except what I paid myself.

Q. Except what you paid yourself. Now, then, that $100 location fee that you talked about there, did anybody ever pay that?

A. Ever pay it?

Q. Yes. A. I don't know.

Q. What is that?

A. I don't know anything about that.

Q. You didn't see anybody pay it? A. No.

Q. Didn't you understand or know that you—that McKinley **[436—268]** and Puter had effected an arrangement with Kribs, or C. A. Smith through Kribs at the time final proof was made, to furnish the money there and take the land?

A. Yes, I knew that Kribs—that they had made arrangements with Kribs to furnish the money. Knew that at the time that McKinley brought him up to Mealey's there. He told me then Kribs was going to furnish the money.

Q. He was going to get the land?

A. He didn't say about that. He said he was going to furnish the money.

(Testimony of Dan W. Tarpley.)

Q. You understand they was going to get the land—the same people?

A. No, I didn't understand he was going to get the land.

Q. You didn't know that?

A. No. The first I knew he was going to take the land was the day final proof was made.

Q. Yes, he was going to take the land, taking it right there.

A. Well, either there or shortly afterwards—I don't know.

Q. What did you understand the purpose of the mortgage to him and the deed to Willd the same day? What was it for?

A. I don't know. I didn't know there was. Don't know anything about that.

Q. You knew they were making these deeds and mortgages at the same time, didn't you?

A. I don't know. I know on the day final proof was made, McKinley told me that Kribs was going to take the land, or loan the money. That is the first intimation that I knew it was to be sold or transferred at all.

Q. Yes, they went right ahead with that mortgage and added $100 to it for filing people?

A. These mortgages were given at the time the parties **[437—269]** proved up as security. The deeds, some of them, was secured a week—several days after that.

Q. How many? A. I don't know.

Q. Isn't it a fact, there wasn't a single deed secured afterwards—with two or three exceptions—no

(Testimony of Dan W. Tarpley.)
deed secured afterwards except from married men whose wives were not there?

A. I don't know as to that.

Q. What? A. I don't know as to that.

Q. Do you remember going out and getting any single men's deed afterwards?

A. No, I don't remember of getting any deeds except of the Brownsville fellows.

Q. Did you get Hugh Blakely's deed in Brownsville?

A. I think so. I am not positive. I went over and got some and I don't remember how many I got.

Q. Did you get Frank Burford's deed in Brownsville? A. I don't know whether I did.

Q. Don't you recall it was married men, Henry Blakely, John Harrison and a man by the name of Cooley, J. P. Cooley?

A. I don't know. I suppose those we got there will show. I don't remember which ones I got. I may have got all in Brownsville—two or three. I remember going over and getting some deeds.

Q. Now, didn't you understand when you were talking with these people there, that McKinley and Puter were intending to get title to that land, or in it so they could give it to somebody else?

A. When they signed those?

Q. No, when you talked to these entrymen. **[438—270]**

A. State that question again.

Q. (Read.)

A. Why, no, I didn't understand it.

Q. What did you understand?

(Testimony of Dan W. Tarpley.)

A. Well, McKinley told me that when he was locating on these lands that they was—they didn't have the money, but was going to put these people on these lands—going to file them, and would give ten weeks and try to get somebody to furnish the money.

Q. And take the land?

A. He didn't say anything about taking the land. Said they would pay $100 location fee each—there were 57 claims. If the lands were sold—there was a $600 mortgage. If the lands were sold, there would be $5,700 in it anyway, if he didn't get only $600; there would be $5,700—$100 a claim for 57 claims.

Q. That was in case the fellows went back on the bargain you had made with them and didn't let you have the land?

A. There was no bargain made at that time.

Q. You understood you was making a bargain with them? A. With who?

Q. With the entrymen?

A. Oh, with the entrymen—no.

Q. By which you, McKinley, Puter, or whoever you designated would get title to the land?

A. There wasn't anything said about it at that time.

Q. I understand. Nothing said about it, but that was the understanding?

A. You will have—read that question again, please.

Q. (Read.)

A. Bargain with the entrymen?

Q. Yes. **[439—271]**

A. For what?

(Testimony of Dan W. Tarpley.)

Q. By which he was to get $75 for the use of his right in that land?

A. Well, we made the bargain with the entrymen. They was to get $75 for filing on a claim—timber claim. We was to furnish the money if they didn't have it.

Q. And they all told you they did not have it?

A. Yes, I guess they did. **[440—272]**

Q. And you went right ahead and furnished every cent of expense, did you? A. Yes.

Q. Never an entrymen offered to pay his fare or do anything of that kind?

A. No, I don't think they did.

Q. You, McKinley and Puter attended to the whole transaction? A. Yes.

Q. When they got down there and made proof, they were expecting their $75.00, and they got it immediately?

A. They were told that they would get it when they made final proof.

Q. Yes, sure; and they took a mortgage and deed simultaneously? A. Well, I don't know.

Q. Practically?

A. Well, I don't know as to that—whether it had been understood—the deeds of some of them were made after the mortgage was executed; but I don't know of any of them that was where they had mortgaged, and the deed was made at the same day—I don't know. I had nothing to do with the making of the deeds.

Q. Didn't you know at that time, when you first started to talk with those entrymen, that that $100

(Testimony of Dan W. Tarpley.)

proposition, if it was mentioned at that time, was merely a precaution against the entryman going back upon his illegal agreement with you? A. No.

Q. You did not? A. No. **[441—273]**

Q. Didn't you know that McKinley and Tarpley expected to get a title to that land, so they could handle it, by means of that transaction?

A. I don't. I do not.

Q. You didn't know that?

A. No, sir. I don't know how they could get title to it—they didn't have the money.

Q. What?

A. They couldn't get title to it themselves. They didn't have the money.

Q. Didn't they go right out to get the money?

A. Yes, they went out and borrowed the money.

Q. Did they borrow the money?

A. That is what they said.

Q. You knew that they were negotiating the sale of those lands in the east from the very first, didn't you?

A. No. I knew they were trying to get the money to finance it.

Q. Trying to get a buyer for the land?

A. I know that Puter made a trip east to raise the money.

Q. Two of them?

A. Well, he might have made two. I don't know.

Q. Now, then, when that deed and mortgage were signed there, did you think that you were securing McKinley and Puter a $100 location fee?

A. Well, now, understand you, now that I didn't

(Testimony of Dan W. Tarpley.)

have anything to do, and had no interest in the transfer of these lands whatever.

Q. Yes, but you were interested in negotiating the deal?

A. No, I was not. In negotiating the deal? **[442—274]**

Q. That is, you were getting people to file, and getting those lands in condition to take them away from the United States?

A. Yes, that part of it.

Q. You were a lawyer?

A. I was not acting in a legal capacity.

Q. No, but you had been admitted to the bar?

A. Yes.

Q. What did you suppose you were paying that $75 to those fellows for?

A. I supposed I was paying them the $75 for taking up the timber claim.

Q. That you had agreed to give them?

A. Yes. I stated two or three times we agreed to pay them $75.

Q. Yes?

A. Advance them $75 on a timber claim.

Q. And right then and there, you still had a $100 claim against them for a location fee?

A. Yes; charge them $100 for a location fee, sure.

Q. Why didn't you take a mortgage for $525 and keep the $75?

A. Well, we agreed to advance them this money. I suppose as well advance it to them then.

Q. Why advance a man money, for securing him 160 acres of land?

(Testimony of Dan W. Tarpley.)

A. If they didn't pay the location fee, couldn't they go and sell the land, and where would you get your location fee if they sold the land, without making a mortgage? **[443—275]**

Q. Suppose you kept that $75 right in your hand there instead of handing it over to the mane you would have had $75 on your location fee, wouldn't you? A. No.

Q. What is the use of giving a man who owed you $100, $75, and have him owing you more than that?

A. Well I don't know—we wanted to get these filings on this land. We had a few days to beat the Northern Pacific to the Roseburg Land Office—we had to hurry; and it really was by advancing these fellows the money—it was an inducement for them to go and take the land up, take it up in a hurry, we only had a few days.

Q. That was the thing that got the filers, wasn't it? The $75?

A. Why, I suppose, they wasn't going out there for nothing—sure.

Q. No. The timber claim was no object to them —it was the $75, wasn't it?

A. A timber claim wasn't worth very much at that time, $75 was a pretty good profit to make on a timber claim at that time.

Q. And they understood that that was the profit they were making for the use of their right for the benefit of you, McKinley and Puter, didn't they?

A. I don't know as they did.

Q. What?

(Testimony of Dan W. Tarpley.)

A. I don't know they understood that.

Q. You understood it? A. No, I didn't.

Q. What?

A. No. I told them there was $75—that there was **[444—276]** at least $75, and maybe more. Some did get more out of it at the time they signed the deeds. Some of them did get more money than $75.

Q. Yes, some of them got $100 because they held you up, didn't they?

A. They got more money.

Q. Yes?

A. They wasn't in a position to hold us up any. We had a mortgage on it. How was they going to hold us up?

Q. They did that before they gave you the mortgage? A. No. No, no, sir.

Q. Let me ask you, did you take any mortgage for more than $600? A. I don't think so.

Q. No? A. Not that I know of.

Q. Why didn't you take one for $25 more, when you had to pay a fellow $100 instead of $75?

A. How is that?

Q. You didn't take any mortgages—when you paid a man $100 instead of $75, you took just exactly the same kind of mortgage you took when you only paid him $75, didn't you?

A. Well, there wa*w* only two or three that I know of that got $100.

Q. Who got $100 that you know?

A. I know Basil Wagner received $100, and also Harry Barr received $100. The reason th*ay* got this

(Testimony of Dan W. Tarpley.)

$25 extra, that I know of is that Wagner made two or three trips with me up in the mountains, **[445—277]** and Barr made a trip up there—I think Barr made two trips—and we paid them $25 extra. That is the only ones that I know of, that I had anything to do with, that got $100.

Q. But you didn't take any more mortgage from them than you took from these that only got $75?

A. The $25 was not a loan.

Q. What was that?

A. It was not a loan.

Q. What was that?

A. For compensating them for what they had done. Wagner made two or three trips with me in the mountains; and Barr made—I don't know—I think two. He came up there the same time Kribs did, and drove the team up.

Q. That didn't have anything to do with the timber claim at all, then? That was for his services outside of that?

A. No, it was paid—I told him at the time—before the money was paid to him. When I paid him, I paid him $100. That is the only ones I know of that got $100. I think most of them, all I ever talked to, was $75 was the sum that they got.

Q. You remember having a talk with me in the Oregon Electric car going up to Salem, about two *yars* ago, a little less?

A. I remember, yes, something on the electric car.

Q. About this same business?

(Testimony of Dan W. Tarpley.)

A. Yes, but I don't remember what the conversation was.

Q. And do you remember talking to me afterwards in Salem, about two or three hours afterwards, when you **[446—278]** met me on the street, and renewed the conversation?

A. No. Was it on the street?

Q. Yes. You remember that, don't you?

A. Was it on the street?

Q. Yes.

A. Not on the street.

Q. Well, in a saloon,—Eckleman's saloon—in which you said to me that all of the entrymen that you had anything to do with, and knew about, understood before they made their filings that you people were going to get the land, and you understood you were going to get the land, and they were going to get the $75 for the use of their right?

A. I made that statement to you?

Q. Yes.

A. No, sir. I don't remember ever saying that.

Q. Don't you remember? A. No.

Q. On the car that you made a statement similar to the one you are making here now, and I told you that I was expecting to hear that very story, but I didn't know who would be the first one to spring it?

A. Yes, I remember that.

Q. And now I found that you were the man that was going to spring it on me first?

A. And I still state that.

Q. And I acted kind of hostile, didn't I?

A. I don't know.

(Testimony of Dan W. Tarpley.)

Q. And you followed me up to renew the conversation, and told me this other thing, in Salem, after I got there. **[447—279]**

A. Oh, no, I didn't. I didn't know you were in there, at all, and I met you in there. I didn't know you were there.

Q. You called me aside to tell the same thing again.

A. I did call you aside. I don't know exactly what the conversation was.

Q. But you say now that you didn't say to me there that every one of those entrymen understood that he was to get $75, and you people were to get the land?

A. I do. I don't ever remember saying that to you or anybody else.

Q. No? A. No, sir.

Q. There in the saloon? A. Yes.

Q. Yourself and I being present, and talking about this same matter? A. Yes.

Q. Well?

A. No, sir, I don't think I ever made that remark to you or anybody else.

Q. Didn't you answer in this way to me: "Of course they did"? A. No, sir.

Q. That is all.

Witness excused. **[448—280]**

[Testimony of Harry Saltmarsh, for the Government.]

HARRY SALTMARSH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Saltmarsh?

A. 784 Kelly.

Q. And what is your business?

A. I am on the beer wagon,—bottle beer wagon.

Mr. GEARIN.—What did he say his business was?

A. Bottle beer business.

Q. Where were you living in January, February and March, 1900?

A. Living in Albany.

Q. What were you doing there at that time?

A. I think I was painting at that time.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Dan Tarpley? A. Yes, sir.

Q. And did you know them then?

A. Why, I think I got acquainted with them that year.

Q. You took up a timber claim there, one of these claims in this case? A. Yes, sir.

Q. Tell the Court how you came to take that claim?

A. Well, it was so long ago I can hardly remember much about it. Somebody introduced me to Mr. McKinley, I believe, and Tarpley, and they pro-

(Testimony of Harry Saltmarsh.)

posed to me to take up the claim. And I told them all right. They told me what there was. **[449—281]**

Q. What did he tell you?

A. He offered me $75, I believe, at that time.

Q. And he was to pay the expenses and fees?

A. They were.

Q. Well, then, after that conversation, what did you do?

A. Well, there was a crowd of us went to Brownsville, took a rig, we met them in Sweet Home.

Q. Who were in the crowd?

A. Well, that is pretty hard to say.

Q. Well, as many of them as you can recall, Mr. Saltmarsh.

A. Well, there was very few that I can remember. I think Bas. Wagner was there, McKinley, Tarpley, Charley Farrell, and some parties from Salem. I think one of the Barr boys was there.

Q. This was up to the land?

A. Yes, sir, when we went up to look at the land.

Q. Had you been to Roseburg yet?

A. No, sir.

Q. Well, after you saw the land—whose place did you stay at up there when you got up there?

A. Mealey's.

Q. How far did you travel from Mealey's to see the land?

A. I don't know. It was some three or four or five miles, I think. I don't know how far it was—don't remember.

Q. After you had looked at the land, what did

(Testimony of Harry Saltmarsh.)

you do—what occurred?

A. After we looked at the land, we came back to the house again. **[450—282]**

Q. In Albany?

A. Came back to Mealey's. Then we came from Mealey's to Lebanon, and from Lebanon to Albany. I didn't go back through Sweet Home. I went back the other way.

Q. How long was it then before you went down to Roseburg to file?

A. I don't remember whether it was that same week or not,—right in there close. I think it was the same week that we went to the claim.

Q. And who went to Albany with you and looked after you? A. Who went to Albany?

Q. I mean to Roseburg.

A. Why, McKinley and Tarpley.

Q. And how many of people locating were in that party?

A. Oh, I guess there was 15 or more. I don't remember how many there was. There was quite a crowd of us.

Q. Who paid your fare?

A. Well, I don't know who paid it. I supposed that Mr. McKinley seen to that. That was the way it was understood.

Q. When you got to Roseburg, what did you do?

A. Why, I don't remember whether we got in there at night or in the morning, but I think we got in there in the morning, and we filed on the claims, and came back to Albany.

Q. Then, when did you next hear from the claim,

(Testimony of Harry Saltmarsh.)

and who gave you the notice?

A. I don't know whether it was McKinley or Tarpley. It was quite awhile.

Q. What did they say to you then at that time?

[451—283]

A. They said something about going back out to Roseburg again to prove up, make the final proof.

Q. Did they appoint a time then for you to be ready to go? A. I think they did.

Q. Then, what did you do when that time arrived? A. We went to Roseburg.

Q. The same party that had gone up to file there?

A. Very near—very near the came crowd.

Q. Were McKinley and Tarpley along?

A. All excepting some of them that relinquished.

Q. How is that?

A. There were some of them that relinquished.

Q. In the meantime? A. Yes.

Q. Had you been asked to relinquish?

A. No, sir. Only through a Northern Pacific attorney—Norton, I believe is his name.

Mr. LIND.—What is that?

A. A Northern Pacific attorney came and wanted me to relinquish, and I would not relinquish.

Q. Well, when you got up there this time to prove up, what occurred? A. Well, we proved up.

Q. Where did you stop—do you recall?

A. Well, I think it was the McLellan House.

Q. Did all the balance of the party stop there?

A. I don't know. I know there was quite a few of us stopped at the McLellan, and we ate in the Mc-

(Testimony of Harry Saltmarsh.)

Lellan House, and we roomed cat-a-corner from there.

Q. Where? **[452—284]**

A. Catercorning from there. It is an annex, I suppose, to the McLellan.

Q. You made proof at the Land Office?

A. Yes, sir.

Q. Did you have any conversation with McKinley or Tarpley before that, before going to the Land Office?

A. They just says we was going up there to make final proof, and everything would be straightened up.

Q. Well, after you had given your proof there in the Land Office, what did you do then?

A. I think we signed some papers.

Q. Where? A. In the Land Office.

Q. Was that after you had finished signing the things that the officers asked you to sign there?

A. Which? Q. That you signed papers.

A. Yes, sir.

Q. Who gave you the papers to sign, that you refer to?

A. I don't remember now who that was. I don't remember whether it was McKinley or whether it was Mr. Kribs.

Q. Was Kribs there?

A. He was there at the final proof, yes, sir.

Q. In there while you were making proof?

A. I think he was. I could not say for sure. I don't know whether he was in the room there or in another room adjoining.

Q. How near was this adjoining room? Did you

(Testimony of Harry Saltmarsh.)

go into an adjoining room? **[453—285]**

A. I think I did.

Q. You don't recall whether Kribs was in there or in the Land Office? A. No, I cannot.

Q. How many people went, or how many people were there signing similar papers?

A. Oh, I guess there were about 20 or 25.

Q. That many? A. Yes, sir.

Q. Well, after you got your paper, what did you sign, do you know?

A. Well, I supposed to be signing a mortgage—I supposed that was what it was.

Q. Anything else?

A. I didn't look it over much.

Q. You didn't look it over? A. No.

Q. What occurred then after you got it signed?

A. We left the Land Office and went down to the train to catch the train home.

Q. How long after you had made proof and signed these papers was it that you went to catch the train?

A. Oh, I don't know. I can't tell. I don't remember.

Q. An hour--two hours?

A. Well, that is something I cannot recall.

Q. Well, what occurred when you got to the train?

A. Well, before I got on the train, McKinley handed me $75.

Q. Hand anybody else any money?

A. I suppose he did. I seen him handing Barr some money—Harry Barr.

Q. How much did he give Barr? **[454—286]**

(Testimony of Harry Saltmarsh.)

A. I do not know.

Q. Did you see him handing the balance of the fellows anything that were there?

A. No, I don't know as I did. What they got I don't know. What Barr got, I don't know.

Q. You didn't talk it over with Barr?

A. No.

Q. You were not married at that time?

A. No, sir.

Q. Well, did you ever sign any deed or other paper after that? A. Yes, sir.

Q. When?

A. About a year or so afterward.

Q. Where was that?

A. In the Revere House in Albany.

Q. Who was present?

A. Why, Mr. Kribs and a special agent. I don't know whether there was a stenographer there or not.

Q. How did you find out how to get up there?

A. Why, McKinley—I was working at the brewery then—he came out and told me to go down to the Revere House; that Mr. Kribs wanted to see me to make an affidavit there, before a special agent, told me the number of the room. So I went down to the room.

Q. Did McKinley give you any instructions before you went down there?

A. No. He said Mr. Kribs would be there.

Q. Did the agent examine you?

A. Yes, sir.

Q. Who answered the questions? **[455—287]**

(Testimony of Harry Saltmarsh.)

A. Well, I answered most of them. What I didn't know, why Mr. Kribs would either nod his head one way to me, or shake it the other, and I would answer yes or no.

Q. How did you know how?

A. Well, the way the question was put to me.

Q. Well, did you have any understanding that Kribs was to nod or shake his head?

A. No, sir.

Q. He just sat there and did it? A. Yes.

Q. Did you know at that time that you had deeded the land to anybody? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Did you know whom you deeded it to?

A. Supposed to be deeding it to Kribs or John A. Willd—I don't know which it was.

Q. That John A. Willd—you didn't know anything about at that time?

A. I never seen the man.

Q. What? A. I never seen the man at all.

Q. When did you first hear that you had deeded the land to John A. Willd?

A. That was supposed to be the way I understood it—that Mr. Kribs was acting as agent for John A. Willd.

Q. At the time you got the $75?

A. That is the time I got the $75.

Q. Did you talk with Kribs personally about it?

A. No, sir; I did not.

Q. Whom did you talk with?

A. All my transactions was with McKinley and

(Testimony of Harry Saltmarsh.)

Tarpley. **[456—288]**

Q. Well, did you ever get any money or any other money out of the thing except the $75?

A. Yes, sir.

Q. When? A. When I made the affidavit.

Q. What did you get then?

A. I don't remember whether it was five or ten dollars.

Q. Who gave you that?

A. Mr. McKinley. No, Kribs.

Q. When did he give you that?

A. Right after I signed the affidavit.

Q. How long was it before you went into the Revere House there that McKinley came to see you?

A. Why, he came out to the brewery, and seen a man I was working for, and he told me I could get off for awhile. I don't remember whether it was in the morning or afternoon. I went right down at that time and went right into the room. I don't suppose it was half an hour after I had seen McKinley till I was in the room.

Q. Now, then, in those answers that you gave there before Stratford, the special agent, I will ask you if you remember being asked: "Who, if any one, did you pay for locating you on the land?" and giving an answer: "McKinley, $125."

A. I answered that, did you say?

Q. Yes, did you tell the special agent you paid McKinley $125 for locating you?

A. If that was the way the question was put, I suppose I did. I don't remember whether I did or

(Testimony of Harry Saltmarsh.)

not. I guess I did if it is there. **[457—289]**

Q. Did you ever pay McKinley $125?

A. No, sir.

Q. Or any other sum? A. No, sir.

Q. This question, "Did you borrow the money or any part thereof with which you paid the Government for this land? A. I did. I borrowed $600 of Frederick A. Kribs." Did you answer that in that way? A. I think I did.

Q. Had you borrowed any $600 from Mr. Kribs?

A. I was supposed to borrow it. I had never seen it. He was supposed to forward that money.

Q. Forward it where?

A. Well, for all expenses.

Q. Whom was the expenses paid to?

A. I supposed that he paid the Government for the land.

Q. Do you know how much the land cost?

A. It was supposed to cost $2.50 an acre.

Q. Well, that would be $400. And you got $75?

A. Yes.

Q. What did you suppose he did with the rest of the money?

A. Well, I don't know. I suppose he kept it. I never seen any money only the $75.

Q. It says: "Did you have the transaction with Mr. Kribs personally, or did some one act as his agent in making the loan? A. With Mr. Kribs personally."

A. No. I done all the business mostly through McKinley. I did have a little talk, I believe, once

(Testimony of Harry Saltmarsh.)

with Kribs, but not much. I don't remember what it was.

Q. Well, who answered that that way to that? Did you answer it that way?

A. I think I did. **[458—290]**

Q. Had anybody instructed you that you had better answer it that way?

A. Well, it was the supposition that I was to get the money through Kribs.

Q. But I mean when you were talking with Stratford now. That was a year afterwards.

A. Oh, I don't remember.

Q. You don't know how you happened to answer that? A. No.

Q. "Was the money paid you in cash or by a check on the bank? A. In cash."

A. Well, it was supposed to be cash when he put it into the bank, or into the Government bank.

Q. Did you see any of it?

A. No, sir. I never seen any of it.

Q. Was any of it paid to you? A. $75.

Q. "Where was the money paid you at?" A. In Roseburg, Oregon, at the hotel." Do you remember giving that answer? A. No.

Q. What? A. I don't remember.

Q. Well, were you paid at the hotel?

A. No, sir. He paid me at the depot. That is, he give me $75.

Q. Now, then: "What disposition, if any, have you made of the land? A. I have sold it to John A. Willd." Did you answer that in that way?

(Testimony of Harry Saltmarsh.)

A. I don't remember. The mortgage was due, and I supposed that would be the way I would answer, because **[459—291]** I was supposed to get this money through Kribs from Willd. I supposed that I answered it that way.

Q. How much?

A. Money for the claim, that was all.

Q. "How much did you receive for it? A. $900." A. I don't remember that.

Q. Did you ever answer Stratford that you had got $900 for that land?

A. I don't remember of it.

Q. What?

A. I don't remember that. I don't think I ever did.

Q. "Who, if anyone, acted as the agent of Mr. Willd in purchasing this land from you? A. Mr. Dan Tarpley." Did Mr. Dan Tarpley ever negotiate any sale of that land?

A. Tarpley and McKinley. That is what I stated awhile ago.

Q. "Did he pay you in cash or by a check on the bank? A. In cash." Did Tarpley ever pay you any cash for that land?

A. I never received a sent from Tarpley.

Q. "Where was the money paid you? A. In Albany, Oregon." Were you ever paid any money in Albany, Oregon, in connection with this transaction?

A. No money only the money Kribs gave me after I gave this affidavit.

(Testimony of Harry Saltmarsh.)

Q. That was five or ten dollars? A. Yes.

Q. "How long was it after you made your proof and paid for the land before you sold it to Mr. Willd? A. About a month." Did you ever sign any deed in regard to this land or any paper outside of Roseburg except this one?

A. Not that I can recall. **[460—292]**

Q. "Have you paid the mortgage of $600 which you gave on the land? A. I have. Q. To whom did you pay it? A. To Mr. Kribs." Did you ever pay Kribs that mortgage? A. No, sir.

Q. How did you happen to answer those questions that way? A. I don't remember.

Q. How is that? A. I can't remember.

Q. Did you really answer them that way?

A. I don't remember of answering it at all. I don't remember hearing that question.

Q. Now, in regard to the payment: "Where at? A. Here in Albany." Did you ever pay Kribs any money at Albany or anywhere else? A. No, sir.

Q. (Mr. McCOURT.) I offer the mortgage to Kribs for $600, that is the certified copy of the record, bearing date the 19th day of April, and made before John H. Shupe and H. G. McKinley, apparently in Roseburg.

Marked "Government's Exhibit 72."

Mr. McCOURT.—And deed to John A. Willd, deed purporting to have been made on the 24th day of April, 1900. H. G. McKinley and D. W. Tarpley, witnesses.

Marked "U. S. Exhibit 73."

(Testimony of Harry Saltmarsh.)

COURT.—Whom is that acknowledged before?

Mr. McCOURT.—That is acknowledged before McKinley.

Q. Do you remember that about two days after proof, two or three days after proof, of McKinley coming up there to Albany, and getting you to sign another paper?

A. No, sir, I don't remember of it.

Q. Did he ever pay you any money except the one time at **[461—293]** Roseburg?

A. McKinley?

Q. Yes. A. That is all.

Cross-examination.

(Questions by Mr. LIND.)

As a matter of fact, wasn't the deed signed before McKinley at Albany some time after proof was made at Roseburg?

A. I don't remember of signing any of the papers in Albany to that effect. The paper that I signed I believe was in Roseburg.

Q. You said a Northern Pacific attorney asked you to relinquish your claim. Who was that attorney? A. I think his name is Norton.

Q. Where did he call on you?

A. In Albany. He had the chief of police around there locating all the boys around one evening.

Q. He had the chief of police doing what?

A. To locate the different ones that was in Albany there. He didn't know who was who.

Q. And he came around and wanted you to relinquish?

(Testimony of Harry Saltmarsh.)

A. Yes. They wanted the claim themselves.

Q. What did you tell him?

A. What did I tell him?

Q. Yes. A. I told him that I wouldn't.

Q. Why wouldn't you?

A. Well, because I didn't want to.

Q. Well, did you want the claim yourself? **[462—294]** I say, was it because you wanted the claim yourself? A. I wanted this money.

Q. What money? A. The $75.

Q. Did he offer to pay you anything for it?

A. Who?

Q. For the relinquishment? A. Who?

Q. Norton. A. No, sir.

Q. When did you first hear that McKinley intended to raise the money for proving up by giving a mortgage?

A. That he intended to—how was that?

Q. When did you first hear that McKinley intended to raise the money to prove up these claims—your claim—by giving a mortgage?

A. I didn't know but what McKinley had the money himself. I didn't know how he was fixed, or anything else about it.

Q. When did you first hear any talk about mortgage? A. When I first met McKinley.

Q. When you first met McKinley?

A. Yes, sir.

Q. What did he say about the mortgage then?

A. He says that we can mortgage the claim and we get the money, and he says, "you can go to the

(Testimony of Harry Saltmarsh.)

claim and take it up, and it won't cost you a cent, no expenses whatever."

Q. That he would mortgage the claim to get the money? A. How is that?

Q. That he would mortgage the claim? [463—295]

A. I don't remember what he said in regards to that.

Q. Well, you said something yourself, but I could not hear you, Mr. Saltmarsh. Just a moment ago you said something about mortgaging the claim to get the money.

A. Well, that is what I said, that he would advance all this, and it would merely take a mortgage on the claim.

Q. Merely take a mortgage on the claim?

A. Yes, sir. If it was not redeemed, why, it was to be turned over to these people, or whoever took the mortgage.

Q. If the mortgage was not redeemed, if it was not paid, the mortgagee would get the land?

A. Yes, sir. In a certain length of time, I think it was three months, or something like that. I don't remember what length of time it was.

Q. If it was paid, the land would be yours?

A. Yes, sir. I had a chance to redeem it in that time.

Q. You were willing to make that arrangement?

A. Yes.

Q. When did you change your mind and conclude that you would rather have $75 and be done with it

(Testimony of Harry Saltmarsh.)
than to take chances of paying that mortgage?

A. When did I make up my mind?

Q. When did you make up your mind that you did not care to redeem from the mortgage?

A. I don't think—

Q. You had the right—you had a right, under your arrangement with Mr. McKinley to pay off that mortgage if you wanted to, didn't you?

A. Yes, sir. **[464—296]**

Q. Well, when did you make up your mind that you did not care to pay the mortgage?

A. It must have been made up all the time. It was understood.

Q. What was understood?

A. That I was to receive $75 for my right, or for the claim, and they was to pay all expenses.

Q. To pay all the expenses? A. Yes, sir.

Q. Out of that? A. Yes, sir.

Q. But if you wanted to pay the mortgage, you had a perfect right to do so, didn't you?

A. Yes.

Q. Well, when did you conclude that you did not want to pay your mortgage?

A. When did I conclude? Well, I thought I answered that.

Q. How?

A. I thought I answered that.

Q. Now, you say that Mr. Kribs gave you $10—five or ten dollars, I don't remember which. Do you remember which it was? A. No.

Q. What did he say when he gave you that money?

(Testimony of Harry Saltmarsh.)

A. Nothing was said. He says something about "Here's for your trouble coming down here, and putting you out of your work."

Q. Had you had any talk with him before that?

A. Not in regards to that.

Q. You said he nodded his head. How do you wish us and the Court to understand that statement?

A. He would ask me—the agent would—simply ask me **[465—297]** a question, and if I didn't understand one way, which way to answer, why, Mr. Kribs would shake his head one way, or this the other way. That was it.

Q. Did you intentionally or knowingly answer any questions wrongfully?

A. I don't know whether I did or not.

Q. How?

A. I don't remember whether I did or not, it has been so long ago.

Q. Well, now, of course the dates and many of the things you did not remember, you had forgotten about? A. Yes, sir.

Q. And did he suggest, did he nod, when questions of that kind came up?

A. We had no conversation whatever before I went into the room—Kribs and me.

Q. How?

A. Mr. Kribs and me had no conversation whatever before I went into the room.

Q. Well, had you had any conversation with anybody else as to what you were to say? A. No.

Q. With no one?

(Testimony of Harry Saltmarsh.)

A. Not that I remember of.

Q. That is all.

Redirect Examination.

Q. Didn't McKinley tell you in substance what you should say, when you got up there?

A. No, sir.

Q. He did not?

A. He says that Mr. Kribs would be in the room there. **[466—298]**

Q. Did you say to McKinley that you could not remember the transaction, or details?

A. I don't remember whether I said anything like that or not.

Q. He just told you Kribs would be there. What did he say Kribs would do?

A. He didn't say.

Q. Didn't say?

A. Not that I remember of.

Q. You knew when you told that agent that you got $900 in cash, received it in Albany, that that was not so, if you did say it?

A. If I said it, I knew it was not so. I don't remember saying it.

Witness excused. **[467—299]**

[Testimony of Jay S. Phillips, for the Government.]

JAY S. PHILLIPS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Phillips?

(Testimony of Jay S. Phillips.)

A. Salem, Oregon.

Q. How long have you lived there?

A. Well, over 30 years.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. How long have you known Horace?

A. Well, over ten years, I believe.

Q. And do you know Dan Tarpley?

A. Yes, sir.

Q. How long have you known Dan?

A. Fifteen or eighteen years—perhaps longer.

Q. You knew Dan when he used to work in the postoffice down there at Salem?

A. Yes, sir. Yes, sir.

Q. What business were you engaged in in 1900?

A. I was tending bar or in the saloon business—I don't know which.

Q. Where did you tend bar? A. Where?

Q. Whom for? Whom did you tend bar for?

A. I was with Talkington—Frank Talkington.

Q. Do you remember taking up a timber claim up in Linn County? A. Yes, sir.

Q. One of the claims involved in this case?

A. Yes, sir.

Q. Who informed you of the location of this timber claim?

A. That they had claims, you mean?

Q. Yes. **[468—300]**

A. Well, whether Mr. McKinley or Mr. Tarpley had spoken to me first, I couldn't say which one; but I talked with both of them about it.

(Testimony of Jay S. Phillips.)

Q. And did you mention the matter to some other persons there about that time?

A. Well, yes.

Q. Whom?

A. I think I asked Charlie Barr. I think I talked to him about going up, taking up a claim, after I found they had claims to locate with.

Q. About how many did you?

A. I think Mr. Green was the only other one I spoke to about it.

Q. John L. Green?

A. Yes. I think he was the only one.

Q. Where did you speak to him about the matter?

A. I don't remember. I might have met him on the street—I couldn't say—because he hardly ever frequents a saloon.

Q. After McKinley and Tarpley had talked with you, what did you do in connection with the entry first? What was your first act?

A. Well, I told them that—I told Dan—I was talking with Dan at that time—I told him that I hadn't the money to take the claim up. Well, he said he knew of a man that had the money to loan on timber claims, and he said he could get it. So then I told him I would take one up.

Q. And what did you do then after you had this conversation? Where did you go?

A. I don't know. I was around about my business, I guess.

Q. I mean in connection with the entry?

(Testimony of Jay S. Phillips.)

A. Oh, in connection with that. [469—301]

Q. Yes.

A. Well, from Salem we went to Albany; stayed over night there.

Q. Who was in the party, now?

A. Well, there was Mr. Green, Mr. Barr, and Mr. McKinley, I think—yes Mr. McKinley, and Tarpley, and one or two others, I think. I could not recall their names though.

Q. Charlie Burley?

A. Yes, Charlie Burley.

Q. Ed Finley?

A. Ed Finley, yes, sir.

Q. Sell Finley? A. No, sir.

Q. He was not along? A. No, sir.

Q. And after you had been out there to look at the land, what did you do?

A. We came back and went to Roseburg.

Q. The whole party? A. Yes, sir.

Q. Did McKinley and Tarpley both come back with you?

A. I am not positive about Tarpley. But McKinley, I think, came back with us.

Q. Well, what did you do at Roseburg?

A. Well, we filed on the land.

Q. Where did you stop?

A. Well, I stopped—I ate my meals at the restaurant there, and I stopped at—it was not at the hotel; it was a rooming house, across from the hotel. I don't know the name of the place.

Q. And where did you go from Roseburg, then?

(Testimony of Jay S. Phillips.)

A. Came back to Salem.

Q. With the same party—the entire party?

A. Well, no I don't believe we all came back together. [470—302] I couldn't say.

Q. Did McKinley come back?

A. I am not positive.

Q. Well, who paid your expenses on that entire trip? A. I couldn't tell you.

Q. What? A. I couldn't say.

Q. You didn't take care of that part of it?

A. I didn't take care of that, no, sir.

Q. Well, what next occurred in the matter?

A. Well, I don't know of anything occurring, any more than going on and taking it up.

Q. You went on to prove up. Now, who told you when it was time to prove up?

A. Sir?

Q. Who notified you of the time to make proof?

A. I couldn't say whether it was Tarpley or McKinley.

Q. One of them?

A. One or the other. I couldn't say which.

Q. Now, how many people were there went up when you went up to make proof?

A. Well, about the same number, I think.

Q. Who paid the expenses of that trip?

A. I couldn't tell you.

Q. Well, when you got to Roseburg, what did you do?

A. Went to the Land Office. I signed a mortgage there, and gave my note for $600.

(Testimony of Jay S. Phillips.)

Q. What else did you do? What did you get at the time? A. I got $75.

Q. Did you sign a deed there at that time?

A. No, sir, not as I am aware of.

Q. Did you ever sign a deed? [471—303]

A. I think I did, yes, sir.

Q. How long afterwards?

A. Now, it was either just about four months or a year. Now, which it was, I could not say, because I was at the Hot Springs for four years in succession, and I came out from the Hot Springs and signed the deed. That is, that is what I thought I came out to do. And I thought I was signing the deed when I signed it.

Q. From what hot springs?

A. Up at the Breitenbush.

Q. Where did you go to sign it? A. Sir?

Q. Where did you go to sign that instrument you thought was a deed?

A. Why, at Albany. I came down to Albany.

Q. Came down to Albany? A. Yes, sir.

Q. Whom did you sign it before?

A. Well, I couldn't say, any more than Mr. McKinley was there.

Q. What building did you go to?

A. I think it was in what they call the Revere House there.

Q. There was a fellow there with a typewriter, wasn't there?

A. I am not positive. No, I am not positive.

Q. Did you see Fred Krebs there?

(Testimony of Jay S. Phillips.)

A. I don't know whether he was in there or not.

Q. He was in Albany at the time?

A. Oh, yes.

Q. You met him there?

A. I met him in town, but I don't know as he was up there or not.

Q. Do you remember whether or not you signed a deed and a [472—304] mortgage both there in Roseburg when you got the $75?

A. No, sir. No, sir.

Q. What? A. I didn't know I did.

Q. Didn't know you did? A. No, sir.

Q. Did you sign any in Salem?

A. Not as I remember of.

Q. Do you remember of signing any instrument before Puter? Do you know Puter?

A. Yes, sir.

Q. And Tarpley?

A. Yes, sir. But I never—not as I know of.

Q. Never signed any document before them?

A. Not before them, no, sir.

Q. They were both present there in Roseburg?

A. Yes, they were there at Roseburg. But you meant since then, didn't you?

Q. Yes, I meant after you left Roseburg.

A. Well, no. No.

Q. Well, now, did you get any more money when you signed this instrument in Albany in the Revere House?

A. I got my expenses from the Hot Springs down, yes.

(Testimony of Jay S. Phillips.)

Q. Who paid them?

A. I think McKinley give it to me.

Q. Did he pay you anything for your time?

A. No, sir. Well, the expenses and time—that is in the time—my expenses coming out.

Q. Well, now then, since you made your proof in Roseburg, you never signed any instrument in connection with this matter excepting that one up there in the Revere House?

A. Not as I remember of. **[473—305]**

Q. Well, you would probably remember if you did?

A. Well, I don't remember of any other at all.

Q. You understand the transaction was closed there in Roseburg? A. No, sir.

Q. When you got your $75? A. No, sir.

Q. Oh, you didn't?

A. No, sir, I did not.

Q. Well, did you ever call on anybody to close it afterwards?

A. Sir? Well, when I went to Albany that is what I thought I was doing—I thought I was signing a deed there.

Q. You understood you had got all the money you were going to get out of it?

A. No, sir. No, sir.

Q. Why didn't you get some more money?

A. Because I couldn't sell it. I tried to sell the claim.

Q. Oh, you did? A. Yes, sir.

Q. Whom to?

(Testimony of Jay S. Phillips.)

A. The first man I tried to sell to was a man in Roseburg.

Q. Right there when you proved up?

A. Yes, sir.

Q. Whom did you try to sell to?

A. Well, sir, I forget the name, but he was from Washington. Perhaps you will get his name later. Because Mr. Green came down to where I was, and took me up and introduced me to this man, and we each tried to sell our claim to him. Yes, sir.

Q. You concluded that this $75 from that arrangement of McKinley's and those fellows was not enough?

A. That is what I did. I thought I could make more out of it.

Q. And you and Green went out to see if you couldn't get a [474—306] little more money?

A. Yes, that is what we did. We was going to try to get more money out of it.

Q. You tried to get some of the other fellows to go in with you on it, and they would not do it?

A. Well, I don't know. We might have done that, yes.

Q. That is before you had taken the $75, wasn't it? A. No, sir, I believe not.

Q. Oh, you think it was after you had taken the $75? A. Yes, sir.

Q. You wouldn't be sure of that, though, would you?

A. Not positive, no. But most probably it was.

Q. Was McKinley in the room there at the

(Testimony of Jay S. Phillips.)

Revere House when you made those statements before that agent?

A. I am not quite positive.

Q. Who answered the questions, you or Kribs?

A. Why myself.

Q. Well, now, listen here—I will ask you if that is your signature there, and call your attention to the claimant's affidavit in Government's Exhibit 38?

A. That is it.

Q. That is your signature?

A. That is my signature.

Q. Well, now, did you tell the Special Agent this—I will let you read it if you don't think I am reading it right: "I never owned any real estate in the neighborhood of this land. I borrowed $600 of Mr. Frederick A. Kribs to pay the Government for the land and the other expenses incident to the entry, and gave him a mortgage for ninety days at ten per cent interest on the land. The money was given me personally by Mr. Kribs, in cash, in Roseburg, Oregon, at **[475—307]** the time I made final proof."

A. I don't remember that.

Q. Did Kribs give you the money?

A. It was not read that way to me. No, sir. No, sir. I never handled any of the money there at all.

Q. You did not? A. No, sir.

Q. Did Kribs ever pay you any money?

A. No, sir.

Q. At any time? A. No, sir.

Q. You say Mr. Kribs was present while you

(Testimony of Jay S. Phillips.)

were making this affidavit in the Revere House?

A. I couldn't say he was present, no. That is what I say.

Q. You know he was in Albany?

A. He was in Albany, yes.

Q. Did you since pay Mr. Kribs the amount?

A. No, sir. That was not in anything. No, sir, I don't remember of anything of that kind.

Q. "I have sold the land to Mr. John A. Willd for $850." Did you say that?

A. Not as I remember of, no, sir.

Q. If you did say it, you could not think you were selling the land at that time, or deeding the land, could you? A. No, sir. No, sir.

Q. "Out of that sum I paid the mortgage of $600 to Mr. Kribs."

A. I don't remember of ever anything like that coming in at all in my signature.

Q. Well, that is about all there is in this thing.

A. Well, I don't remember a thing about that, no, sir.

Q. "The purchase price of the land was paid me at Salem, Oregon, in cash." A. No, sir. **[476—308]**

Q. "I owned the land a month or a little over before selling it." A. No, sir.

Q. Did you answer that way?

A. I don't remember any of that. No, sir, I do not.

Q. "I sold the land because I had other business that I wanted to look after, and I was not sure that I would have the money to pay off the mortgage when

(Testimony of Jay S. Phillips.)

it became due.

A. I don't remember any of that. No, sir, I do not."

Q. Well, that is your signature there, isn't it?

A. That is my signature, yes, sir.

Q. And this part of it must have been written out at least before you could have got your signature on?

A. It must have been, yes. It must have been. But I don't remember it at all. No, sir, I do not.

Q. Well, your recollection of the facts was as clear then as it is now? A. How?

Q. Your recollection of the facts was as clear then as it is now?

A. Of the facts, yes, as far as I know. But I don't remember.

Q. This statement was not true at all, that I have been reading to you? A. Sir?

Q. The statement I have been reading to you was not true at all?

A. Well, I don't remember anything of that kind, no, sir.

Q. Well, I say, it is not true, if you did remember?

A. No, it would not be. No, sir; no, sir.

Q. Sure not? **[477—309]**

A. I don't remember that at all.

Q. I think that will be all.

Mr. McCOURT.—I might want to ask him a further question.

(Examination by the COURT.)

Q. From whom did you understand you were

(Testimony of Jay S. Phillips.)

coming down to Albany to sign a deed?

A. I understood Mr. McKinley to say that. I understood him to say when I came down he wanted me to sign the deed.

Q. You did sign it in the Revere House?

A. I think it was in the Revere Hotel.

Q. Was the instrument read to you that you signed? A. I could not say now.

Recess taken until 2 P. M. **[478—310]**

Portland, Oregon, April 21, 1910, 2 P. M.

JAY S. PHILLIPS resumes the stand.

Mr. McCOURT.—I want to introduce the mortgage and deed of Phillips to Kribs and Willd respectively.

Phillips Mortgage marked "U. S. Exhibit 74."

Phillips Deed marked "U. S. Exhibit 75."

Cross-examination.

(Questions by Mr. LIND.)

Mr. Phillips, if I understood your evidence correctly, you said you have no recollection of signing a deed until some months later? A. Yes, sir.

Q. Now, what you refer to as signing somewhat later, may that not have been the affidavit which you identified? A. What say?

Q. What you referred to as signing later, may that not be the affidavit?

A. Well, it might have been, but I thought it was a deed at the time, yes, sir.

Q. You said that you and a gentleman by the name of Green tried to sell your claims at Roseburg on the day of final proof? A. Yes, sir.

Q. Is he one—was he one of the parties who had

(Testimony of Jay S. Phillips.)

entered the lands at the time you did?

A. No, sir. No, sir.

Q. Did he have any timber claim himself?

A. Not as I know of. He was a stranger to me.

COURT.—I don't think that the witness understood the question. He is referring to the man he offered to sell to. **[479—311]**

Q. I meant Green, the man who—

A. Oh, Green, yes, yes; he had a claim; oh, yes.

Q. He had a claim? A. Yes, sir.

Q. What conversation did you have with Green in regard to selling your claims, if you recall?

A. Well, the only conversation I remember is that I told him—I said, "We ought to sell these for more money than that, than we are getting"; and he said, "If we find a buyer, why, we will sell." So it happened while he was up town he found some gentleman—I don't know who; he introduced me to him, but I forgot his name. He came down and said, "We have got a gentleman to sell our claims." He says, "Let's go up and have a talk with him." We went up and he did not offer us anything that we would take.

Q. When did you conclude to let your claim go?

A. Well, right from the start, I felt as though I would let mine go if I could get more out of it.

Q. No, I mean let it be sold to Willd. When did you conclude that Puter or McKinley might sell it?

A. Well, now, after I found that I could not sell it, why, I said I will just turn it over. I believe it was about the time the note came due. I wanted to get my note back.

(Testimony of Jay S. Phillips.)

Q. Did you have the right to sell your claim at any time that you wanted to?

A. I had; that is, through Mr. Tarpley. He told me that I could sell at any time that I got more—at any time that I wanted to sell, he said that I had a right to sell it. And he was the man that located me, so I just took his word for it.

Redirect Examination.

Q. Did you understand Green had agreed to or was going to get **[480—312]** $75 from McKinley too?

A. I never knew what Mr. Green was going to get, no, sir.

Q. Did he state to you he thought he was not getting enough?

A. He did—did not tell me how much he was getting. He said we was not getting enough; or rather, we can make more out of this claim.

Q. You had not talked to McKinley or Tarpley up to that time about how much you were going to get—after the first time?

A. I had talked with McKinley and Tarpley, yes.

Q. Before you went to file on it?

A. Certainly I did.

Q. They said you would get $75? A. Yes.

Q. You did not talk any more until you proved up that day and went out to see if you could get any more? A. I did, yes.

Q. After you had sold, what were you going to give them?

A. After I had sold it I would not give them anything.

(Testimony of Jay S. Phillips.)

Q. Nothing at all? A. No, sir.

Q. You would have become—

A. I would went and paid my note off, yes.

Q. But you didn't have any note then. That is before you gave the note. When you made the note you went and took your $75?

A. Why, I got my $75, but I understood I had the claim right in my possession until I went down to Albany, and I thought that is where I signed the deed.

Q. Who did you ever try to sell it to after you left Roseburg? A. Different ones.

Q. Who?

A. I don't remember the names. Different ones.

[481—313]

Q. Well, can you name a single man?

A. No name, I couldn't; don't remember; but around the saloon there would ask different ones—business men, if they wanted to buy a timber claim.

Q. After you made proof and came back from Roseburg? A. Yes.

Q. Notwithstanding you signed a deed there?

A. I didn't know I signed a deed there.

Q. You got the $75? A. Yes.

Q. That they agreed to pay you?

A. Yes, sir, I did.

Q. And you had not agreed to pay them anything? A. No, sir.

Q. Not a thing?

A. No, sir, only the interest on the money.

Q. They were going to all that trouble, taking you to the land, taking you to Roseburg twice, pay-

(Testimony of Jay S. Phillips.)

ing your hotel bill, looking after your claim, and were to get only the interest on the money.

A. Interest, and didn't Mr. Tarpley make $100 to locate me?

Q. Did you ever pay the $100?

A. It was in the note, wasn't it?

Q. Did you think it was? A. I did.

Q. Did they figure up any expenses you had been to? A. They did.

Q. What did they figure up?

A. They called it $25.

Q. What?

A. They called it $25. Other expenses beside the locating and the $75 he gave us and then the $25 for railroad expenses and that made the note $200.

Q. What about his expenses?

A. I mean $600. **[482—314]**

Q. What about their expenses?

A. They did not say anything about that.

Q. What about the Land Office fees?

A. That was supposed to all be paid. That was in that $400. That is the way I thought it was.

Q. That is the way you think it is now?

A. No, sir, that is the way I thought at the start.

Q. What did you think when you answered in that affidavit that you got $850 for that?

A. I don't remember that—

Q. Don't know anything about that?

A. No, sir, I do not.

Q. What did that man offer you and Green for the land?

A. I don't remember now the amount, but there

(Testimony of Jay S. Phillips.)

wasn't enough in it for us to let it go. I don't remember the amount.

Q. So you let it go to Tarpley and McKinley?

A. I let it go more because I wanted to get my note back, because it was due and the mortgage due.

Q. You signed a deed the same day as the mortgage? A. I didn't know that.

Q. When did you ever have any discussion with them about letting it go after that?

A. It was when I came down from the Hot Springs. I came down then and the time was up for—the note was due, and I came down to turn the property over because I couldn't get it out. That was just the way I felt about it.

Q. How long did you say that was after you—

A. I can't remember now. As I said to you before, I didn't know whether it was four months after or three, or whether it was a year after.

Q. Over a year, wasn't it?

A. I could not say positive, because I know I was at the **[483—315]** Hot Springs three or four years. I came out from the Hot Springs to sign what I thought was the deed.

Q. What made you think it was a deed, and you had sold it to John A. Willd?

A. Perhaps they did not read that to me, I don't know.

Q. Who talked to you about it?

A. Nobody lately.

Q. Before?

A. Only I met McKinley and he sent for me to

(Testimony of Jay S. Phillips.)

come down and sign the deed there.

Q. Did he go along when you signed the deed?

A. He was up there, but whether he went in—I guess he was in the room, yes, I am not positive.

Q. Did you think that was Willd you were signing it to there—the typewriter?

A. I did not know anything about that. I am not versed in law or in business affairs of that kind.

Q. Who did you think you were transferring it to at Albany?

A. Just transferring it back to Kribs. That is who I thought I was transferring it to, because the note was in his favor.

Q. What did you tell this man Willd?

A. I don't know. I don't remember that I told him anything.

Q. Did you see Kribs down there at Roseburg?

A. Roseburg—I believe I did, yes.

Q. Talked to him?

A. Well, yes, I talked to him a little, I guess. Met him there—had an introduction to him.

Q. Who introduced you to him?

A. I could not say—McKinley or Tarpley or some of those boys that were acquainted with him. I could not say which. **[484—316]**

Q. Now, you name a business man in Salem that you ever asked to buy a timber claim?

A. F. P. Talkington.

Q. Who else? A. I can't name.

Q. He ran the saloon you kept there?

A. He did.

(Testimony of Jay S. Phillips.)

Q. When did you speak to him about it?

A. Before the note was due.

Q. Did you ever get that note back?

A. I did.

Q. Have you got it now? A. Yes, sir.

Q. Now, when did you get it back?

A. I could not tell you the date.

Q. Who gave it to you?

A. I could not tell you now. I don't remember.

Q. Where did you get it? Where was it given to you?

A. I was under the impression—now, for sure, I could not say, but under the impression that I got that at Albany at the time I came down.

Q. Yes?

A. Yes, sir, I am under the impression that I got it there, but not positively, because I know I made a trip back down to Salem, and I thought I took that note and pasted it in my sticker at home.

Q. You had it in a sticker there?

A. I have had. You can see it there.

Q. Wasn't that note handed back to you the very day it was made?

A. Not as I remember, no, sir.

Q. Who did you give it to?

A. I don't remember that, only to Kribs. It was made out in his favor. I signed the note because it was there for me to sign, and then I had a mortgage too, and I gave them **[485—317]** a note for security.

Q. And you didn't sign a deed any time later?

(Testimony of Jay S. Phillips.)

A. Well, I thought I signed the deed in Albany, as I tell you.

Q. Well, if you signed one—signed before—it was taken from you without your knowledge?

A. I didn't know anything about that. Didn't know anything about that, no, sir.

Q. Will you state now on the stand that you didn't get that note until the time you went down to Albany? A. I will not.

Q. What? A. I will not state that.

Q. If you didn't get it that time, what other time did you ever see anybody to give it to you?

A. I could not tell. I thought I got it at that time; I would not say I did.

Mr. McCOURT.—I offer the note in connection with the mortgage.

Marked "U. S. Exhibit 76."

Q. Before you made a filing at all, you understood there would be $75 in the deal?

A. I did, sir.

Q. And you didn't put up a cent of money?

A. No, sir.

Q. And you didn't take a step except McKinley and Tarpley told you to until you made the proof?

A. Yes, I walked around. I didn't take anybody's advice, no.

Q. I mean in regard to the transaction?

A. No, sir.

Q. They attended to the whole thing?

A. They attended to that part, yes. **[486—318]**

Q. And as soon as you got through the proof you

(Testimony of Jay S. Phillips.)

got the $75?

A. I got the $75, yes, sir.

Q. And went away from Roseburg and heard no more from the transaction until Mr. McKinley sent for you at Albany?

A. No, I don't believe I did. I might.

Q. Never made any further inquiry about the matter?

A. No. Not necessary, any more than just trying to get rid of it. I wanted to make some money out of it.

Q. How much did you offer it to Talkington for?

A. I would have sold it for seven or eight hundred dollars.

Q. Yes? A. Yes, sir.

Q. Did you know that the mortgage was for ninety days? A. Yes, sir.

Q. Did you ever make any inquiry—did anybody ever demand payment of you, of it?

A. No, not then, no.

Q. Nor at any other time?

A. That is what I thought I went down to Albany for.

Q. Who called you up at the Hot Springs?

A. Mr. McKinley.

Q. Where from?

A. Well, he says—I could not tell you where from, but he says, "Meet me in Albany," he says, "I want to see you." He sent a telegram out to Detroit, then a boy brought it *out* horseback to the springs.

Q. That telegram did not say anything about a deed, did it? A. Telegram? No, no.

(Testimony of Jay S. Phillips.)

Q. No? A. No, sir. No. Just come out.

Q. You didn't know what you were coming down to Albany for?

A. I did not at the time.

Q. Until you got there? **[487—319]**

A. After I got there I met McKinley and I understood him to say he wanted me to sign a deed, so I went up to the hotel and signed what I thought was a deed.

Q. Did he accompany you up to the hotel?

A. I believe he did, yes.

Q. Do you remember whether Kribs was in there?

A. I could not say, couldn't say.

Q. Was anybody there besides the man who took the instrument?

A. One man was there—might have been—I know one little fellow in there besides Mac.

Witness excused. **[488—320]**

[Testimony of Charles Pfeiffer, for the Government.]

CHARLES PFEIFFER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Mr. McCOURT.—It is agreed that the register of the Revere House at Albany, Oregon, shows Fred A. Kribs, wife and two sone, Minneapolis, registered at that hotel on April 1, 1900, and on the same day the said register shows H. G. McKinley of LaCrosse, Wisconsin, registered there.

Mr. LIND.—That is the same McKinley here in Portland?

(Testimony of Charles Pfeiffer.)

Mr. McCOURT.—Yes, this same register of April 2d, shows S. A. D. Puter, Portland, Oregon, registered at the Revere House.

April 5th, the register shows B. H. Wagner of Salem, Oregon, being the Basil H. Wagner, a witness heretofore called on this case.

On April 7, 1900, the register of that hotel shows Dan Tarpley of Salem, Oregon, H. G. McKinley of LaCrosse, Wisconsin, and B. H. Wagner of Salem Oregon, as being registered at the hotel.

April 9, 1900, shows E. D. Stratford registered at that hotel, and also the said H. G. McKinley and Dan Tarpley.

April 10th, the register shows D. W. Tarpley, Jay Phillips, Charles Barr, Charles Burley, Ed Finley, Sell Finley and L. Green, and the register shows an entry charge to McKinley, bed and breakfast for all the parties mentioned.

April 13th, the register shows Horace McKinley, John Green, Charles Burley, Ed Finley, Sell Finley, Jay Phillips; charged to "McK." one meal.

April 15th, the register shows D. W. Tarpley and Horace **[489—321]** McKinley registered at that hotel.

April 16, 1900, the register shows J. J. Jaggy, W. J. Drinker, J. F. Whitney, C. E. Moulton, Edwin Mays and wife, S. A. D. Puter, B. H. Wagner.

April 21st, Fred A. Kribs and family, Rufus Drum.

April 22d, Horace McKinley.

April 23d, S. A. D. Puter.

April 24th, Horace McKinley and D. W. Tarpley.

(Testimony of Charles Pfeiffer.)

May 18th, the register shows Fred Kribs and H. H. Davis of Minneapolis in Mr. Kribs' handwriting.

May 20th, the register shows C. A. Smith, H. H. Davis, S. A. D. Puter, F. A. Kribs, all in the handwriting of Mr. Kribs. The register also shows upon that date William F. Mealey, Foster, Oregon.

The register of the Revere House further shows Fred A. Kribs registered July 10, 1901, and on July 11th, the register shows E. D. Stratford, C. W. Stratford, H. G. McKinley, J. C. Stratford.

Sunday, November 3, 1901, shows J. VanZant—Mr. VanZant's name will appear later.

Monday, November 4, 1901, E. D. Stratford of Roseburg.

November 9, 1901, E. D. Stratford, O. J. Mealey, J. VanZant.

The matters read into the record may be considered as evidence without introducing the books?

Mr. LIND.—Certainly.

Mr. McCOURT.—If the Court please, I desire to have an examination of the room book that Mr. Pfeiffer has in connnection with the first visit of Mr. Kribs and Mr. Smith at the hotel. It will not be necessary to have Mr. Pfeiffer here to identify it. This room book will show how long **[490—322]** the parties stayed after they registered. The register does not show how long they remained.

Mr. LIND.—What do you claim?

Mr. McCOURT.—I don't know what it does show.

Mr. GEARIN.—That is all right. Let him send it down.

Witness excused. **[491—323]**

[Testimony of Horace G. McKinley, for the Government.]

HORACE G. McKINLEY, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

How old are you, Mr. McKinley?

A. Forty years.

Q. How long have you been in Oregon?

A. Twenty years.

Q. What has been your business since you came to Oregon?

A. Land business—dealing in lands.

Q. Buying and selling land for eastern connections, or eastern people, rather?

A. Yes, and myself.

Q. Been engaged in that business ever since you have been here, for the past twenty years?

A. Off and on.

Q. Well, when were you off?

A. Well, I was off for a couple of years a little while ago.

Q. What you doing during that time?

Mr. LIND.—Is it material in this case?

Mr. McCOURT.—I believe not. I will not press it. It might be. It isn't material to this Court, but it might be to present a record to the Appellate Court, if it ever went there.

Mr. LIND.—I don't think you ought to.

COURT.—It is not at this stage of the case.

(Testimony of Horace G. McKinley.)

Q. You know S. A. D. Puter? A. Yes, sir.

Q. How is that? A. Yes, sir.

Mr. LIND.—Speak a little louder, will you?

Q. And Dan W. Tarpley?

A. Yes, sir. **[492—324]**

Q. When did you first commence to do business with Mr. Puter in the land business? A. 1892.

Q. And how long did you continue to have transactions—land transactions with him?

A. Until 1905, at different times.

Q. Were your land transactions largely in connection with public land?

A. Both state and Government.

Q. But the lands which you were accustomed to deal in as you became connected with them were either State lands or Government lands?

A. Well, not entirely.

Q. Well, that was the bulk of it?

A. No, I can't say as it was.

Q. What?

A. I have secured options from different people that had lands, and resold those and dealt that way too.

Q. When did you first become connected with the tract of land in controversy in this case?

A. With that—with the particular pieces that are in controversy, in January, 1900.

Q. Tell the Court the circumstances under which you became connected with these lands.

A. I was stopping at Albany at the Revere House and I think it was January 4th of that year that Mr. Mealey came down to the hotel there and he informed

(Testimony of Horace G. McKinley.)

me that he knew of a fine bunch of timber situated up on the Santiam River. He asked me if I could handle it, and I asked him if he could give me the numbers. He said that if I could handle it, that he would for $10 a quarter section. I went over **[493—325]** the matter with him a little bit; asked him about the topography of the country there, the river, etc., and asked him for a little time to consider it; and he then told me that the Northern Pacific had a lot of fellows in there and that if I intended to do anything with it, that I would have to hurry. So I told him that I would let him know in the morning, and Mr. Tarpley was with me at the time. I talked the matter over with him a little bit, and finally I concluded that I would go down and see Mr. Puter who I knew was then in Portland. And I told Mr. Mealey, I says, "I will think the matter over and I will let you know in two or three days." He told me that I would have to hurry about it, again, as the Northern Pacific were sending out lists every few days to the Land Office at Roseburg there and the particular tracts that he knew of would perhaps be taken in a short time. So I told him I would come to Portland and return in a day or two. I did. I came down and had a talk with Mr. Puter about it and we had a long talk, as to how would be the best way of handling it. Whether to try and find some one that would scrip it, but we thought that would take too long, and we couldn't do it; and finally we discussed the proposition of locating people on it and making what we could out of it that way, and finally decided that was the best way, and I returned to Albany. I

(Testimony of Horace G. McKinley.)

telephoned Mr. Mealey to come down. He arrived. I had Mr. Puter down from Portland and we secured the data that we wanted from Mealey and signed a contract to pay him $40 a section for ten sections. This money to be paid at the time that we located any parties on the land. And that was the beginning of the—do you want me to go on further to the finish?

Q. About what date was that?

A. I will refer to my book here if you want to know the **[494—326]** exact date.

Q. Yes, refer to the book.

A. I think it was, according to this it was January 4th, Mr. Mealey came down. I went to Portland on the morning train of the 5th; I returned to Albany on the evening train of the 6th. I telephoned to Mealey the 7th. Mr. Mealey came out. On the 8th Mr. Puter came down from Portland; we signed a contract with Mealey to furnish ten sections.

Q. Did you have any land in there or control any at that time? A. Yes, sir.

Q. How much?

A. I had about 30 quarter sections.

Q. In these same townships?

A. Well, I wouldn't—wait a minutes, let's see. I possibly had 20 quarter sections in these townships.

Q. School lands?

A. Yes. I had other interests in some other land in 14—1 there, in a way.

Q. What date did you say that was, now?

A. What date?

Q. That last date there when you and Puter—

(Testimony of Horace G. McKinley.)

COURT.—January 8th.

A. The 8th of January.

Q. 8th of January, all right. How long was it before you filed anybody upon the land?

A. Thursday, the 18th of January.

Q. Who filed upon this day and how many—that day? A. Seven.

Q. Do you recall who they were?

A. I have the names here. **[495—327]**

Q. Did you put the names there at the time you made that entry? A. Yes, sir.

COURT.—18th or 19th?

A. I have it the 18th here. No, no, it would be the 19th. I left on the evening train for Roseburg with those parties.

Q. Who were they?

A. Brady—why, Clel Nash; we called him Brady—Nash—Clel Nash; Frank Starr, Bas Wagner, Lee, Lerwill, Barr, Drinker—seven.

Q. Where did you leave with that—what place did you leave?

A. Well, I think some of them got on at Albany and some at Halsey and some at Salem.

Q. Where were you? Where did you take the train?

A. I have it here that I was at Salem.

Q. And did Puter and some more file at that same time?

A. I haven't that down here; I don't know.

Q. Well, now, don't you remember, as a matter of fact, that Puter filed with the first bunch there—Puter and his wife and some more of his relations?

(Testimony of Horace G. McKinley.)

A. I guess the records show. I don't remember when it was. I know they filed right at first.

Q. Right after you filed the first lot of people what became of Puter?

A. To the best of my recollection Puter went east.

Q. Do you remember how long he was gone?

A. I think he returned along about the—between the 20th and 25th of February.

Q. Returned to Albany?

A. Returned to the coast here, yes.

Q. Well, now, in the meantime, did anybody else file while **[496—328]** Puter was gone?

A. Yes, sir.

Q. State the dates that you have there, the persons filing, and who they were.

A. Saturday, the 20th of January, Z. Smith, Walter Boone, Jennings Whitney, J. J. Jaggy, Charles Smith, A-r-c-h-a-m-b-e-a-u, is his last name; B-r-o-c-h-e-t-t-e, that is his last name, and Neal Dozier. That is all on that date. Monday, the 22d, Thomas Wilson, Anthony Thomas, and Enos Conn. The 23d, H. G. Meyer, Carrie Meyer, Miss Lind; H. C. Barr, Brandeberry, and Mr. Farrell. 30th, Jay Phillips, "Finley Brothers," I have it here, Burley, Drum, and Barr. Well, they went down on the 30th. They filed on the 31st. February 1st, Saltmarsh; I have it here Plankington, it is Pilkington; and Adkison, The others—there were 16 parties went down Monday, February 20th, but I haven't the names here; I don't know who they were.

Q. February 20th?

A. I think that was all—on February 26th.

(Testimony of Horace G. McKinley.)

Q. Now, then, you haven't the names of the February 26th? A. No, sir.

Q. How many were there?

A. I have here 16 parties; "Filed 16 parties."

Q. That was the last date you filed anybody?

A. I think it was; yes, sir.

Q. Now, in the meantime did you have any communication with Puter? A. Considerable.

Q. Have you got the letters you received from Puter? A. I have two of them here.

Q. Have you any copies of the letters that you sent him? A. I can't say. **[497—329]**

Q. Have you looked? A. Yes, sir.

Q. Been able to find them?

A. No, I have not been able to find them. I haven't looked very thoroughly for copy. I haven't went over everything I have.

Q. Do you know whether or not you have all the letters or have them accessible that you received from Puter— A. I have them all.

Q. — during that time?

A. I am quite certain I have them all. That is, I have had them all, I haven't got them now.

Q. Well, you gave them all to me, but those three.

A. Two.

Q. Well, you have three there.

A. Well, three, whatever there was.

Q. I will ask you to examine the bunch of letters which I hand you and state whether or not they are the Puter letters mentioned, that you received between—or after these filings mentioned, from Puter?

(Testimony of Horace G. McKinley.)

A. Yes, sir, I received all those letters from Mr. Puter.

Q. Did you receive them in the regular course of the mail from the point at which they were written?

A. I did.

Q. Did you, during the same interval, receive the telegrams from Mr. Puter which I hand you?

A. Yes, sir.

Q. Those other three letters you mentioned; have you those in your pocket?

A. No, I haven't got them. I didn't put them in my pocket.

Q. What?

A. No, I left them at the room. I changed my clothes and **[498—330]** left them at home. I will send over for them.

Q. I think maybe we had better have those and introduce the whole bunch together as the correspondence in the case. Can you send some one for them?

A. I don't know as I could say just where they were over there, unless I go myself.

Mr. McCOURT.—I will excuse the witness, if you wish and call another witness while you run and get them.

Mr. LIND.—Also put those letters and telegrams in chronological order. That will be a great help.

Mr. McCOURT.—Do you want to put the envelopes with them?

Mr. LIND.—I examined those letters; went over them, and some of them are dated without month. It was necessary to consult the envelope, and McKin-

(Testimony of Clel Nash.)

ley can do that better than anybody. Of course, I consulted him in regard to those.

Witness excused temporarily. **[499—331]**

[Testimony of Clel Nash, for the Government.]

CLEL NASH, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Nash?

A. I am living at Balston, Oregon, at the present.

Q. Where? A. Balston.

Q. What are you doing now?

A. I am working on a hop ranch.

Q. Do you know Horace McKinley?

A. Yes, sir.

Q. Dan Tarpley? A. Yes, sir.

Q. Did you know these people in the early part of 1900, and prior to that? A. Yes, sir.

Q. What was your business then, Clel?

A. I was tending bar for Mel Hamilton.

Q. How long had you been engaged in that business? A. I worked for him since 1894.

Q. How is that?

A. I worked for him from 1894 until after that.

Q. When you—do you remember the matter of a timber claim transaction that you and McKinley and Tarpley had there in 1900? A. Yes.

Q. Which one of them talked to you about it?

Mr. LIND.—This does not concern, as I understand it, one of the claims in the suit, consequently

(Testimony of Clel Nash.)

we object to it as irrelevant in this case, and incompetent for the purpose of establishing any issue in this case, and also, bearing **[500—332]** in mind the suggestion of the Court, I would inquire of the District Attorney and the Court whether, in view of the fact of the large number of entries involved in this suit, it would not appear as though there was quite enough to characterize and color the transaction without going outside. The only possible excuse for evidence of this character might be to characterize the transaction as a whole, and where the transaction involved at bar is so extensive as here, it seems as if there might be enough color in it without going outside of the record. It is my best judgment this evidence is not admissible.

COURT.—I think it probably competent for the purpose of tending to show fraud in the original inception of this enterprise. I suppose that is why he offers it. I shall allow it to be admitted, subject to your objection and exception.

Q. Who spoke to you about it?

A. Well, Bas Wagner and myself and Frank Starr and McKinley spoke to me.

Q. Those are the people that were down there?

A. Yes, sir.

Q. But who was it spoke to you about taking a timber claim before you started at all?

A. I heard Frank Starr saying something about we could make a little money.

Mr. LIND.—I cannot hear the witness.

A. Well, that we could make a little money by going out and taking up a claim, for I hadn't never

(Testimony of Clel Nash.)

expected to use the claim myself, or live on it, and he said we could make probably a little money, so I consented to go to **[501—333]** Roseburg to take up this.

Mr. LIND.—Who stated this to the witness?

A. Frank Starr.

COURT.—Starr.

Q. Did you have any conversation with Horace McKinley? A. Yes.

Q. What did Mr. McKinley tell you?

A. Well, he said a chance to make a little money.

Q. How much money? Did he tell you?

A. Well, he didn't exactly tell me. Somewheres in the neighborhood of $50.00 and expenses.

Q. Well, did you go to Roseburg?

A. Yes, sir.

Q. And where did you go when you went to Roseburg? A. I went to a hotel.

Q. Who paid your expenses?

A. Well, I guess McKinley or Puter or some of them.

Q. Well, did you go to the Land Office?

A. Yes, sir.

Q. Who was there when you got there, of this party? A. Well, there was Frank Starr—

Mr. LIND.—Is it necessary to repeat all that?

Q. There were several people there?

A. Yes, sir.

Q. Was any of the officers of the Land Office there?

A. Why, I think so. They gave me a blank to read over and I read it over, where I had to swear

(Testimony of Clel Nash.)

that I had been on the land and it was fit for nothing but timber—I didn't file.

Q. I invite your attention to a blank, or, rather, to a Timber and Stone Sworn Statement here, and ask you whether that is the blank that you read over preparatory to **[502—334]** signing same.

A. That is a blank similar.

Q. That is the form that you read?

A. The form that I read; yes, sir.

Q. When you read it, what did you do?

A. I didn't sign it; I didn't file.

Q. What? A. I didn't file.

Q. What did you do?

A. I told them that I didn't want to swear that I had been on a place where I hadn't been and so I didn't file. I came home.

Q. Did you say anything to him about the contract that they talked about in there?

A. Well, I didn't know what the contract was, until I read it.

Q. I mean, did you say anything to the people that were there about saying that you hadn't made a contract to sell the land to anybody?

Mr. LIND.—Objected to as irrelevant, incompetent, hearsay.

COURT.—It would depend on who he had the conversation with.

Q. These same people that went there with you were there?

A. Well, I told Frank Starr that I lived too close to a brick house.

(Testimony of Clel Nash.)

Mr. LIND.—I ask that that be stricken out as hearsay.

COURT.—Was it McKinley or some of these people?

Q. Was McKinley and Puter—yes, McKinley—there when you said that?

A. I am not sure he was.

Q. Bas Wagner? A. I think so. **[503—335]**

Q. Tarpley?

A. I don't know that he was. I spoke to Tarpley up at the hotel.

Mr. LIND.—To shorten the record, might not that be stricken out?

Mr. McCOURT.—It shows a forty dollar agreement, to begin with.

Mr. LIND.—There is no evidence of any agreement.

Mr. McCOURT.—He said McKinley said there would be forty or fifty dollars in it.

Mr. LIND.—There might be he said.

COURT.—That part, if in the testimony, might stand, but his statement as to what he said to these people at Roseburg about a contract and about a brick house can be stricken out of the record.

Witness excused. **[504—336]**

[Testimony of John Harrison, for the Government (Recalled).]

JOHN HARRISON, a witness recalled on behalf of the Government, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Now, Mr. Harrison, what business were you engaged in in 1900 when you made the timber and stone entry on the lands involved in this case?

A. I was working at that time just at general work.

Q. General work? A. Of any kind.

Q. And who spoke to you first about taking a timber claim? A. Mr. McKinley.

Q. Personally? A. Sir?

Q. Spoke to you in person there?

A. I think I spoke to him myself.

Q. Where at? A. Brownsville.

Q. What?

A. Brownsville. I would like to get a claim.

Q. And who else did you see, then, afterwards, about it?

A. Well, we went on and he said, "All right," or something, "we run on them sometime," and I don't know as I seen anyone. He phoned to me afterwards that there was seven claims up above Mealey's that we could get, and I might see some of the rest of the party—boys—and if we wanted them, "Now is the chance to get them." Something of that.

Q. Now, who did you see?

A. Well, I told him I would—I would call him up again in a short time, maybe half an hour, or an

(Testimony of John Harrison.)

hour. I seen Mr. Blakely, Henry Blakely. [505—337]

Q. Who else?

A. That was all, only my boy. Mr. Blakely selected, excepting myself.

Q. Since that time what have you been doing?

A. What have I been doing?

Q. Yes.

A. Well, I have done a little of everything. I am a painter by trade.

Q. Where have you worked at the painting business? A. Brownsville.

Q. Working at that now? A. Yes, sir.

Q. Ever work for F. A. Kribs?

A. Yes, sir.

Q. How long?

A. I worked all one Summer, and off and on during the next year, but not steady. One Summer steady.

Q. What doing?

A. Running a compass, mostly.

Q. Cruising timber?

A. Well, I run a compass. Not exactly I wasn't their cruiser—I wasn't their chief cruiser, but I run a compass.

Q. Well, then, after you had seen Mr. Blakely there, what did you and Blakely and those other people do?

A. Well, we got ready right straight and went up to Mr. Mealey's; from there we went on to the claims.

Q. Did you see Mr. Tarpley or McKinley or

(Testimony of John Harrison.)

Mealey? A. Mr. Tarpley.

Q. Who took you up there?

A. From Mealey's, Mr. Tarpley. We went to Mealey's ourselves.

Q. You took Mr. Blakely's conveyance to Mealey's? **[506—338]** A. What?

A. You took Mr. Blakely's conveyance to Mealey's?

A. His team, I think. I think we hired a hack. I would not say for sure. I think we went together.

Q. After you had seen the claim, what did you do?

A. Came back to Mealey's, stayed that night, then back to Brownsville, then went to Roseburg and filed.

Q. And how long after that was it you went back to Roseburg?

A. Well, I could not just state the time. The length of time *it taken* for publication.

Q. Who notified you it was time for you to prove up and to go to Roseburg?

A. I could not say as to that. I think *we taken* it from the paper.

Q. How is that?

A. It was in the paper, the home paper there. It was published, but I would not say whether I was notified at all only through the paper.

Q. Where did you meet Mr. McKinley as you went back to Roseburg?

A. Met him on the train going to Roseburg.

Q. Who paid your fare?

A. McKinley, I suppose.

Q. Had you an understanding prior to that that he would pay your fare, or take care of the matter?

(Testimony of John Harrison.)

A. Not exactly. He said that—when he phoned to us he says that "The claims are there and if you want them—" I believe I asked him how much there was in it, or how much I could make out of it. He said there was $75.00 in it and he didn't know how much more or anything about. **[507—339]** He says, "Whatever you can make out of it, but," he says, "there was $75.00 above expenses and Government price of the land.

Q. Now, when you got down to Roseburg there and made proof— A. Sir?

Q. You made proof—when you went to Roseburg and made proof you went with the people Mr. Blakely spoke of yesterday?

A. Yes, sir; there was seven.

Q. When you got through making proof what did you do?

A. Well, after we made proof, why, Mr. McKinley and us—whether all the crowd or a part of it, but the biggest part of us, at least, seen Mr. McKinley—we went to a room and he said he would get the money, or raise the money—he would fix it where we could get the money. We got it. Well, I don't say as we got the money, but we gave our notes there and secured the parties, and the Government price was paid on it, the *the* expenses, I suppose, and the location fees.

Q. Mr. Kribs was there, was he?

A. I could not say for sure. I didn't know Mr. Kribs at that time. He might have been there. I could not say.

Q. And when you signed that note, how much

(Testimony of John Harrison.)

money did you get?

A. Well, afterwards I got—I could not say just exact, but $75.00 and something over for expenses going above, and so forth, that we paid out ourselves.

Q. What was the matter of expenses there? I didn't catch that. **[508—340]**

A. I could not say what they was. Whatever it was, that was counted in.

Q. How much did Mr. McKinley pay you for getting the other people there?

A. Pay me for getting the other people?

Q. Yes. A. He didn't pay me anything.

Q. That mortgage was signed the same time you made proof? A. Yes, sir.

Q. Who did you mortgage the land to?

A. I could not say exactly, but I think the note was given to Mr. Kribs. That was the name, I am pretty sure.

Q. Well, did you ever get any money out of it?

A. Not after that. After that settlement, no, sir.

Q. What?

A. Not after that settlement, no, sir.

Q. Well, you deeded the land then and there?

A. No, sir.

Q. When did you deed it?

A. Afterwards, after I got home.

Q. About how long?

A. Well, it wasn't long. I could not say just how long, but a short time afterward.

Q. About three or four days?

A. Probably.

Q. Who came to get the deed?

(Testimony of John Harrison.)

A. I think it was Mr. Tarpley, if I remember right.

Q. Was your wife in Roseburg?

A. No, sir.

Q. How many acres was there in your claim?

A. Sir? **[509—341]**

Q. How many acres were there in your claim?

A. 160, I suppose.

Q. Did you ever figure up or did Mr. McKinley figure up with you what the expenses had been and all about the claim?

A. Well, I couldn't say as to that. It has been so long ago, but there was an estimate made of it of some kind just our trip up to Mr. Mealey's and back there to Brownsville.

Q. You had your trip to Roseburg twice. Did he figure in anything for that?

A. He settled that himself. That was—

Q. When he was giving you this $75, he didn't make any figure of that at all, did he?

A. No, sir.

Q. He just gave you the $75 he had agreed to give you in the first place? A. Yes, sir.

Q. And you hadn't had any trouble, hadn't done anything in the transaction except what was absolutely necessary for you to do in order to prove up?

A. No.

Q. He had attended to all of the details?

A. Yes, sir.

Q. You understood when you got that $75 there that you were going to deed the land as soon as you could get up there and get your wife's signature?

(Testimony of John Harrison.)

A. No, sir.

Q. What?

Q. There was nothing said of that at all at that time.

Q. Nothing said about it at all?

A. Not at that time, no, sir.

Q. When was the deed first mentioned? **[510—342]**

A. It was afterwards; after I got home.

Q. Who came and mentioned it to you?

A. Mr. Tarpley.

Q. Did you ask for any more money?

A. No.

Q. Did he offer you any more?

A. Not of Mr. Tarpley, I didn't.

Q. What?

A. No, sir, not to Mr. Tarpley, I don't think.

Q. Well, did anybody ever offer you any more money?

A. No, if they had I would have taken it.

Q. You didn't ask for any more?

A. I couldn't strike anyone that would give me any more.

Q. Who did you try to sell the land to?

A. I couldn't exactly pick them out; one of the Mealey's was mentioned by a part of us who had seen the man, but there was no better offer.

Q. What?

A. There wasn't any better offer made.

Q. When did you offer it to Mealey?

A. Well, it was after—after we had proved up?

Q. What? A. After we had proved up.

(Testimony of John Harrison.)

Q. How long? A. The same day, I think.

Q. What Mealey was it you offered it to?

A. I wouldn't say for sure, but I think it was one they called Judd.

Q. Which? A. Judd, I think.

Q. Was he there in Roseburg?

A. I think so. One of them was there; I think Judd.

Q. What was he doing there?

A. I don't know. **[511—343]**

Q. He had never bought any timber land at that time, had he?

A. I don't know, but he knew of parties possible, I thought, or thought he might.

Q. What?

A. I thought he knew of people that might want to buy it.

Q. Did you see Mr. Kribs there when you made the mortgage?

A. If I did, I didn't know him; I could not say.

Q. Who did you sell your land to?

A. As near as I can tell you, I did not see the man, his name was Willd—something like that.

Q. You have learned since it was Willd, did you? You did not pay any attention at that time, did you?

A. I seen the name, but I didn't know the man; didn't pay any particular attention.

Q. Made no inquiry where he came from, who he was or anything about it?

A. Not particularly, no, sir.

Q. Did you ever pay any attention to the transaction after you signed that deed, at all? Or hear

(Testimony of John Harrison.)

any more about it?

A. No, I paid very little attention to it after wards.

Q. What?

A. Very little afterwards—very little. I thought it was all over with.

Q. You got the $75 that you anticipated getting in the first place, and dismissed the matter from your mind? A. Yes, sir.

Q. Do you remember about a year or more later some gentleman coming up there and taking an affidavit? A. Yes, sir.

Q. Who told you that there would be a gentleman up there to take the affidavit?

A. I think McKinley said there would be one up there. **[512—344]**

Q. How long before?

A. I could not say; a short time, probably.

Q. And do you know the name of that man?

A. I am not certain, but it strikes me a man by the name of Matthews, but I am not certain.

Q. Mathers, wasn't it? A. I think so.

Q. Did you give him an affidavit?

A. Something, an affidavit of some kind.

Q. Wasn't it Stratford? A. Sir?

Q. Wasn't it Stratford? A. What?

Q. Wasn't it Stratford instead of Mathers?

A. It might have been; I could not say for that. I am not acquainted with him at all.

Q. Who was present there when you made the affidavit?

A. I couldn't tell you just exactly who. There

(Testimony of John Harrison.)

was part of the seven also.

Q. I invite your attention to the signature of an affidavit of claimant in Government's Exhibit 28, and ask you if you signed that? A. Yes, sir.

Q. Was that the only affidavit you ever signed in regard to it?

A. As far as I remember, yes, sir. It is.

Q. Do you remember in that affidavit being asked this question: "Who, if any one, located you or showed you this land? A. Mr. Dan Tarpley. Q. How much, if anything, did you pay him for his services? A. About $25." Did you answer that question in that way?

A. If I did that was put in with this location fee in the $600.

Q. How is that? **[513—345]**

A. That would have been in on the $600 on location fees.

Q. Oh, did you ever agree to pay Tarpley any $25? A. No, sir.

Q. What? A. No.

Q. Nor anybody else $25?

A. I was to pay Mr. McKinley, if we didn't let him have it. If anyone else bought the land to pay him location fees, yes, sir.

Q. What? A. Was to pay McKinley.

Q. But you thought McKinley got the land, didn't you?

A. He did, and therefore there was no location fee.

Q. No $25 to anybody. "What disposition have you made of the land since you obtained your final

(Testimony of John Harrison.)

receipt therefor? A. I sold it. Q. To whom? A. To John A. Willd. Q. How much did you receive for it? A. Near $800." Did you get any $800 from John A. Willd?

A. I don't think it was quite that much.

Q. You thought that $600 covered the entire transaction, didn't you? A. Yes, sir.

Q. Why did you tell this man $800, then? I say, why did you tell this government agent that you got $800 for it?

A. I couldn't say that I told him that; I don't know I did. I don't remember.

Q. I ask you if you remember this question and answer: "How did you happen to go to Mr. Kribs to borrow the money for this purpose?" That is, to prove up. "A. I was told that he had money to loan." Did you go to Mr. Kribs to borrow any money? A. I went to Mr. McKinley.

Q. What? **[514—346]**

A. I went to Mr. McKinley, not Mr. Kribs.

Q. Went with McKinley?

A. Yes, sir, and it must have been Mr. Kribs' money. We gave a note to Mr. Kribs.

Q. You understood when you went into the transaction McKinley was going to put up the money, pay the expenses and attend to the entire transaction, didn't you? A. Yes, sir.

Q. You had nothing to do except when you had to go to Roseburg to sign the papers?

A. I understood that, yes, sir.

Q. Do you know Mr. Puter?

A. Just know him when I see him.

(Testimony of John Harrison.)

Q. Ever have any dealings with him in regard to this transaction? A. No, sir.

Q. I ask you if you remember this question being asked you: "Did you have this transaction of the sale of the land with Mr. Willd personally, or did some one act as his agent in purchasing the land for you?" "From you," I suppose. "A. Mr. Puter acted as his agent."

A. I didn't have any dealings at all with Mr. Puter that I remember of. If I did, I don't remember.

Q. Do you know why you answered the Special Agent that it was Puter? A. No, sir.

Q. How is that? A. No.

Q. Don't know why you did it? A. How?

Q. Don't know why you did it? A. No, sir.

Q. Was Mr. Kribs or Mr. McKinley in the room when the affidavit **[515—347]** was being taken?

A. I could not say as for that, I am sure. It was quite—

Q. Did you meet Mr. Kribs up there at Brownsville about that time?

A. About that time, or right after, I did. Anyhow, the next day or so.

Q. Were you paid any money in connection with this affidavit? A. No, sir.

Q. How is that? A. No, sir.

Mr. McCOURT.—I offer in evidence the deed and mortgage usually given in these transactions.

Mortgage marked "U. S. Exhibit 77."

Deed marked "U. S. Exhibit 78."

Q. Now, that affidavit that you were shown yes-

(Testimony of John Harrison.)

terday, there, that you made before Mr. Burns, you read that, or it was read to you and you signed it, did you not? A. Which?

Q. It was read to you before you signed it, was it not? A. I think so.

Q. And you intended to tell Mr. Burns the truth, didn't you?

A. I did, as far as I went, yes, sir.

Q. You canvassed the thing carefully with Mr. Burns? A. Not very, no, sir.

Q. How is that? A. Not very much.

Q. Not very carefully?

A. Pretty reckless piece. It was rather exciting times—

Q. Did you appear as—

Mr. LIND.—Let him answer the question.

Q. Did you appear as a witness before the grand jury at that time? A. No, sir.

Q. Weren't called? You were subpoenaed for the trial or the **[516—348]** grand jury, do you remember which?

A. I was subpoenaed before the grand jury.

Q. Now, when Mr. McKinley first talked to you at Brownsville he told you he had seven claims?

A. Yes, sir.

Q. And if you could get some more of the boys to take them that there would be $75 in it for each of you?

A. Yes, sir, that there would be that much anyway. He left it just this way. It was over the telephone in a few words; that we could get that much out of it—he would insure that much, and if we could

(Testimony of John Harrison.)

sell it for any more, all right.

Q. He told you you might sell it to somebody else?

A. Yes, sir.

Q. What was he to get if you sold?

A. He would get the location fees?

Q. What?

A. If we sold to others he would get the location fee.

Q. But you were to have $75? A. Sir?

Q. And you were to have $75 for it?

A. If he got it.

Q. But you had not sold it yet when you got the $75? A. No.

Q. What? A. No, sir, had not.

Q. You were to get the $75 whether you sold it or not, and you were to have that in advance?

A. That would be covered by the note for $600.

Q. What? A. We gave a note for $600.

Q. Oh, yes, for $600. Did he say anything about the $600 when he talked over the phone?

A. No, sir.

Q. Did you ever figure up to see if they got the $600, when **[517—349]** you got down there?

A. I don't think I did.

Q. What?

A. I don't think I did. I couldn't say now.

Q. As a matter of fact, there was over 170 acres in your claim, wasn't there?

A. I couldn't say as to that. **[518—350]**

Q. As a matter of fact, there were over 170 acres in your claim, weren't there?

A. I couldn't say as to that.

(Testimony of John Harrison.)

Q. Now, how much were your expenses from Brownsville out to Roseburg and back?

A. Well, I couldn't say just what they was. It was carfare and expense of team going to Halsey.

Q. What was the expense of team going to Halsey?

A. I couldn't say, but I would judge it would run up to about $3.00 a day—$3.00 a day, I should judge.

Q. Not for each one of you?

A. No, but for the team, besides keeping it. I think we kept it there while we was gone.

Q. How many days were you gone each time?

A. About three days.

Q. How is that?

A. I think it was part of three days.

Q. And what was the fare from Albany to Roseburg?

A. Got on at Halsey. I don't know—I think it is about $3, or something. I wouldn't say for sure—something about $3.00; right close there.

Q. How long did you stay in Roseburg each time?

A. We was there part of one night, or part of one night, all day, and the next night, till some time the next day, as near as I can remember now.

Q. Well, it cost you at least $15 for each trip, wouldn't it, there and back, and hotel bill and all?

A. I expect. I never figured it up at all—don't remember about what it cost.

Q. Now, that would be something over $540 for your claims, counting the $75 to you? McKinley would not be getting **[519—351]** $100 out of that, would he?

A. I don't know, I am sure.

(Testimony of John Harrison.)

Q. You claim he paid you something more for expenses you had been out too, didn't you?

A. Just I was out board bill, going up there and back, such as that. That was all. He didn't pay no wages—nothing of that kind; just expense. That has been so long ago I could not tell you just how that was arranged. Satisfactorily at the time, and that is all I know about it.

Q. You started in to get $75, and when you got it you were satisfied?

A. Well, I let him have the claim when I got the $75. I had it, I was satisfied to let it go at that. I thought that was as good probably as I could do.

Cross-examination.

(Questions by Mr. BANKS.)

Now, Mr. Harrison, you spoke something about, in your direct examination, McKinley stating to you that if you sold to anyone else you would have to pay him a location fee of $100. When was that conversation with McKinley? Was it at the time that he telephoned to you, when he told you there would be at least $75 in it for you?

A. I think so, as near as I remember.

Q. And he told you at that time that if you sold to anyone else that you would be required to pay him at least $100 location fee?

A. I couldn't say just what the location would be, but whatever it was. That was spoke of, yes, sir.

Q. You left Brownsville, then, after that time, with six others from Brownsville, to go upon the claim prior to **[520—352]** filing, did you?

A. Yes, sir.

(Testimony of John Harrison.)

Q. And when did you see McKinley? You came back after going on the land? A. Yes, sir.

Q. To Brownsville? A. Yes, sir.

Q. And some time after that you went down to Roseburg to file? A. Yes, sir.

Q. Now, from the time that McKinley telephoned you until the time you took the train for Roseburg to file, did you see McKinley or have any other conversation with him? A. No, sir, I did not.

Q. From the time you first had the conversation with McKinley up to the time you filed upon this timber claim, did you have an agreement with McKinley or anyone else, that you would turn the land, or deed the land to McKinley, or to anyone else?

A. No, sir; nothing said about that.

Q. Did you, between the time you filed and the date of final proof, agree to transfer the title to this land to McKinley, or to anyone else? A. No, sir.

Q. And you say that, after you have proved up, you had offered to sell this claim, had endeavored to sell this claim, to one of the Mealey boys?

A. Yes, sir.

Q. Now, was there any talk between you and the rest of your neighbors at Brownsville, that went up to file on these claims, about pooling your claims and selling them to better advantage than $75 a claim? Was there any talk **[521—353]** among you?

A. Yes, sir.

Q. What was that talk?

A. After we proved up, that evening there was some talk of that kind—of keeping them awhile. We had three months to keep them in before we had to

(Testimony of John Harrison.)

pay this note; and there was talk of that; and some of the boys was in favor of it, and some was not. Some wanted to sell—let it go—thought that was as good as they could do. There was talk of that kind, yes, sir.

Q. Well, did the fact that some of them had decided to sell their claims influence you in selling yours at that time? A. Did which?

Q. Did the fact that some of them decided to sell their claims after proving up influence you to sell also? I say, did the fact that some of the boys from Brownsville had made up their minds, after final proof, to sell this land, and not retain them in a bunch, influence you in selling your claim at that time? A. Yes, sir, that did.

Q. Now, counsel has called your attention to an affidavit that you signed before Mr. Stratford. Do you remember now whether or not you made the answers that are purported to be in that affidavit? Do you remember at this time of having made the answers that counsel has called your attention to?

A. No, sir, I do not. I don't remember but mightily little about it.

Q. Now, counsel has called your attention to this affidavit that you made before Burns. Do you remember the circumstances of your having made that affidavit, Mr. Harrison, before Burns?

A. Do I remember the circumstances? **[522—354]**

Q. Do you remember the circumstances under which you signed that affidavit?

A. Well, partly, yes, sir.

Q. Now, I wish you would state to the Court just what Mr. Burns said to you, or anyone else said to

(Testimony of John Harrison.)
you, there at that time, with reference to the matter.

A. First when I was subpoenaed, the Marshal asked me if I would go to the prosecuting attorney's office, first. I just thought I would just as well go there as to the grand jury. So I went.

Q. Speak louder.

A. I went there instead of to the grand jury. The Marshal asked me if I would. I went up there, and I was there I don't know how many times—time after time; would talk a while, and set the next day or day after to come back, which I done. It finally went on—he insisted that it was so and so, just so and so. Well, it got to be—I was away from home—I was down here a long time, and I was anxious to get back home. He talked as if this settled it—an affidavit just settled it. That is all there was to it.

Q. Well, now, were you called before the grand jury at all? A. No, sir.

Q. You went before Burns in place of going to the grand jury did you? A. Yes, sir.

Q. Now, did Burns threaten to have you indicted if you did not sign an affidavit that was satisfactory to him?

A. He threatened it in this way, as near as the words I can tell you. He said there was no use lying to him at all. No use lying to him at all—is the way he worded it. He says, "I know how it is. It is so and so," and he says, "I can have the last one of you indicted." **[523—355]**

Q. Did he swear at you? A. How?

Q. Did he curse to you?

Objected to as immaterial.

(Testimony of John Harrison.)

A. I couldn't say as to that. There was pretty hot words in there, and I can't remember just to that.

Q. And he purported to tell you what the facts in the case were, did he?

A. He did, yes, sir.

Q. Well, did he ask you the contents of this affidavit, or did he proceed to dictate the contents of it himself, and then request you to sign it?

A. It was dictated by them, and then I didn't see nothing particular wrong with it, only it didn't just take only—left it that I was to sell it for $75.

Q. Yes. Well, did he talk to you about the facts before he dictated this affidavit, or did he dictate the facts, and then ask you to sign it?

A. Yes, sir.

Q. How? A. He did.

Q. He dictated the affidavit according to the facts as he presumed they were, and then asked you to sign it—is that it?

A. To a great extent, yes, sir.

Redirect Examination.

Q. Who was with you at the time the affidavit was signed?

A. I couldn't say just who. There was two or three in there at the time.

Q. Was Blakely there?

A. I think so, yes, sir.

Q. Cooley? A. I think so, yes, sir.

Q. And W. J. Burns? A. Yes, sir. [524—356]

Q. And a stenographer? A. Yes.

(Testimony of John Harrison.)

Q. You and Mr. Cooley and Mr. Blakely all signed affidavits similar in their tenor?

A. Something similar, yes, sir, as near as I remember.

Q. Now, you say you talked with some of the members of this party about pooling your lands. What members was it you talked with?

A. That was talked among ourselves. I think Mr. Blakely talked that for one, in his talk about keeping it.

Q. Did Hugh Blakely talk about that?

A. Hugh?

Q. Yes. A. No, sir.

Q. Nor Frank Burford?

A. I don't think either one of them cared to keep theirs.

Q. They had gone off and signed a deed and mortgage and got their $75 right away, hadn't they?

A. Yes, sir.

Q. The only reason for postponing the execution of your deed was because your wife was not there, and Blakely's wife was not there?

A. No, sir. I thought nothing of that.

Q. What?

A. No, that is not it exactly. I did not think that I was under any obligations to let them have it unless I seen fit.

Q. How long have you known Mr. Kribs?

A. Well, I think it was about a year afterwards, or a little over, I got acquainted with Mr. Kribs.

Q. Known him right along down since that time?

A. Since that time, yes, sir.

(Testimony of John Harrison.)

Q. Do you remember Mr. Rabb, who sits at my left here?

A. I just remember him to have been up at Brownsville one time, yes, sir. **[525—357]**

Q. He was up there last summer?

A. Yes, sir.

Q. Do you remember telling Rabb you didn't know Kribs at all, up there?

A. No, sir, I don't.

Q. He asked you specifically about it, and you kept denying it?

A. No, sir. I don't remember any such conversation at all. I don't think I ever denied Mr. Kribs, knowing him, to anybody.

Q. Do you remember telling Mr. Rabb it was Mr. Puter instead of McKinley that paid you the $75?

A. No, sir.

Q. What? A. No, I do not.

Witness excused. **[526—358]**

[Testimony of Horace G. McKinley, for the Government (Resumed).]

HORACE G. McKINLEY resumes the stand.

Direct Examination (Continued).

(Questions by Mr. McCOURT.)

I further invite your attention to three letters from Mr. Puter, and ask you if you received them in the regular course of mail, following their dates?

A. I did.

Mr. McCOURT.—I don't know hardly how to identify these, if the Court please, so I can keep them together. I suppose I can just read them into the record.

(Testimony of Horace G. McKinley.)

COURT.—I think it would facilitate the examination of this case later on, if they were in the record in the order in which they are received.

Mr. LIND.—Yes. Do you prefer to read them now?

Mr. McCOURT.—Yes, I would prefer to read them before proceeding with the witness.

Mr. LIND.—These go in under the same objection as that exhibit 2.

COURT.—Yes, that is understood.

Mr. GEARIN.—It will take all afternoon to read them.

Mr. McCOURT.—Well, the Court will have to hear them.

COURT.—I think perhaps it would be better to read them in, and then they will be in in their order.

Mr. McCOURT.—You catch the telegrams as I proceed with the letters, Mr. McKinley.

A. Yes.

Mr. McCOURT.—"Salem, Oregon, January 9th."

[527—359]

A. Beg pardon. Here is a telegram "January 3d. Will go through Albany on 16 tomorrow morning." That has nothing to do with the matter in hand.

Mr. McCOURT.—"Salem, Jan. 9. Friend Mc. Since I telephoned you, I heard from Roseburg. The whole buis—is vacant so now we must get at it quick. I think you had better go right with them today for you will save one day for I want to hear from you this week." "Get all those applications and assign-

ments signed in blank." That is about something else.

Mr. LIND.—The object of this correspondence is to show the relations between these two parties and the only way we can get at what those relations are is by having the entire correspondence.

Mr. McCOURT.—Well, I will read the entire letter.

U. S. Exhibit No. 79.

"Salem Jan. 9.

Friend Mc.

Since I telephoned you, I heard from Roseburg. The whole buis—is vacant so now we must get at it quick. I think you had better go right with them today for you will save one day for I want to hear from you this week. I would like to hear from you Sat. and get all these applications and assignments signed in blank. You can promise those girls down there a few dollars in case we get the land and mail them to me to Portland. *Roal* them up the same as I send them to you.

By your going up today you can have all day Thursday and Friday in the woods. You will have a good enough idea by that time and then you can come out to **[528—360]** Lebanon and telephone to me. The No. of this certificate is 9247, SW. ¼ of 36 10–4, Linn Co. assigned to me and dated today, Have two other signed. I will sign O. S. Sones' name myself.

The rankin trail consists of all those sec south of south fork of Rock Cr. and it is hung up at present for cancellations. Was located under old Act and

can't be bought.

Now get out to the telephone by Sat. noon so that I can hear from you. I will be here.

I want to talk to you at noon or soon after. Call me up. I will be at the hotel.

STEVE."

Q. Where did you receive that letter, Mr. McKinley?

A. At either Brownsville or Albany.

Marked "U. S. Exhibit 79."

U. S. Exhibit No. 80.

"Portland, Ore. Jan. 20.

Friend Horace:

I leave at 3:30 tomorrow direct for West Superior will stay there probably two or three days, then to La Crosse and will work there for all there is in it on those 32¼, will stay there probably three days. Now, write to Withee and give him an estimate, that is, tell him that you put in ten or fifteen days on that land and that there isn't a ¼ but what will cut (—) whatever you want to say, and at the same time tell him that I went down to see you and that I am on some kind of a big deal and wanted my money $8,480 dollars right off and for Christ sake not to let me get **[529—361]** away from La X for if I do that you will lose all and etc. I will write him myself a line or two this eve and tell him when I will be there and that I would like if he could in the meantime, see someone there who might take those claims for you and hold them. Now, give him a hell of a letter and wire him also about the time I get there. I will let you know by wire when I get there. Those enclosed assignment blanks, I want you to witness and fill in

everything except description and who assigned to. I can do that on the typewriter like we did the others, date them all January 26, for the certificates will not be made out until Jan. 24 or 25. Mail them to me at La X. The certificates will be sent down here and Sadie will forward them to me. Be sure and put seal on.

I will enclose you all the money I can spare in this letter and for Christ now get in and file on all those claims and if you can't get enough there have Basil send some from Salem and get Glasses"—what does that "Glasses" mean?

A. It is the name of some people there, the Glasses. There is several of them—several brothers.

Mr. McCOURT.—(Continues reading:) "And those from Brownsville. I think you ought to get enough there by promising to pay $5 to some one for each one, at the same time have two or three parties working on those terms. You know when one files they always have some friend. You may get several from Oakland, The Home and other places. Lowell may have one or two to send you. **[530—362]**

Now just as soon as you get through, go up to Foster and Get Mealey to work on the trail. I will write him tonight that I will send him a hundred for my plan is to bring some good man out with me inside of twenty days and take him over the trail so that we will have the money when needed.

I will have some one and don't you forget it.

Now write me giving me names and descriptions filed on and date of proof and as soon as paper is is published, forward two or three copies to me. Do

not say anything to anyone at La X. until we close the 32¼ deal, for it may interfere Gildner had several men to go down. I told him the land was all gone and the deal was off. Don't want him to know anything about it.

You can get a raft of fellows in that saloon when the fight takes place. Get one and you get them all. Can't think of any more tonight.

Oh, by the way, have Tarpley sign the enclosed blank and you date and fill in the balance. Put seal on. The name is Edward M. Flinn. Have Porter file on Sec. 33 & 35 14–3 and say nothing to Mealey about that for any section that he doesn't give, we don't have to pay for.

Well, I guess I haven't any more to say. I wish you would try and get in all the women you can for they are better than the men.

I enclose 50.

S. A. D. P."

Q. Where was that letter received?

A. At Albany. **[531—363]**

Marked "U. S. Exhibit 80."

U. S. Exhibit No. 81.

"Chicago, Jan. 22, 1900.

I want you to file those two applications as soon as you get them and take care of the assignments. I will either wire you or send you a check for the first payments and as soon as I do get certificates and fill out assignments and forward to me, always have assignments to me and attach extra blank. Now, in case you get this letter before you wire me to St. Paul I would prefer you to wire me to West Superior for

I go direct from Grand Forks to West Superior and will be there all day Thursday, Friday to St. Paul, Sat to LaX. Maybe not before Monday morning will I get to LaX for I may be detained at West Superior. As soon as I can I will, go there.

I am now about one hundred miles out from Spokane. The dam train is starting again so I will conclude for I can't write when it is moving.

Dam this road anyway, the bummest I ever seen.

STEVE."

Marked "U. S. Exhibit 81."

Mr. LIND.—What road was that?

A. The Great Northern. Now, Mr. McCourt, I have a telegram the 25th of January. The telegram says:

U. S. Exhibit No. 82.

"Duluth, Minn. Jan. 25, 1900.

H. G. McKinley,

Albany, Oregon.

Wired one hundred First National have all filings made immediately.

S. A. D. PUTER.

[532—364] 1:40 P. M."

Marked "U. S. Exhibit 82."

U. S. Exhibit No. 83.

"West Superior, Wis. Jan. 25th, 190

Friend Horace:

I met your friend Stanton tonight. He is a very nice fellow but plum out of his line in trying to sell timber for Christ sake don't give him any Oregon timber land for sale. Sence he got your letter offering a tract of 15000 acres of Oregon timber land for

sale at $5.00 per acre with 16 millions feet or more for ¼ sec, he has advertised it through every real estate man in this whole country. He has shown me letters from men in Chicago, Menominee, Oshkosh and every where else, stating they are organizing a company and was going to buy the whole tract right up. One man had with him that old Sen. Stehpens of Marinette. Was a going to send his man right out and buy the tract. Well, I happened to know old Stephens and that whole push ever there. They wouldn't buy anything; also he has been telling every one around here that you had claims for 5 to 8 million from $1.50 to $3 per a. Now I want you to discharge him right off for he only hurts the sale and cannot do anything. I hope he has not said anything at LaX. One thing good, he did not have the description for if he had I could find it in every town back here, so pay him off and be dam careful how you make such reports to parties back here for it goes to beat the band.

Now, regarding our 14–2 & 3 tract, I hope that you can get at least 55 or 56 good ¼ there I am making a fine plat here of those two towns, showing everything **[533—365]** up and I expect to go to Saginaw, Michigan, the middle of next week with a party from here and from there to Oregon. I have a first class man and know I can sell him the entire tract. No mistake about it providing the timber is there. I take him right out and pay all expenses. I will wire some money to Mealey and I want you to go out and see that the trails are put and put in first class places. I may come in by way of S. F. Will be there sure before 20th of Feb. I will do the best

I can with those 32 ¼ when I get to La X.

Now for Christ sake, in case you haven't all filed on on receipt of this, jump into the river for you have had time enough.

I will have another interview tomorrow with my man and will know more.

Resp.

S. A. D. P."

Marked "U. S. Exhibit 83."

Q. Where did you receive that letter, Mr. McKinley? A. At Albany.

U. S. Exhibit No. 84.

"West Superior, Wis. Jan. 25,

Friend Horace:

I just received your dispatch, arrived here last night at 6-30.

Well, I will see all of my men here today also Hunton. I go to Duluth this forenoon. May have to stay here tomorrow. I will try and wire you $100. If I do it will just about break me. I will have but 25 left to get to La X with, and then I can't say whether **[534—366]** I can make a trade or not.

I don't expect to get any money here for some time.

So you say 30 has filed. I presume by your coming to Albany you must have run out of filing material in Roseburg. I was hoping that you would get enough people in Roseburg for it is so expensive to go to Albany for them, but by all means do not go to Portland. Kepp away from that gang and get every darn claim that is good. Of course, do not take no poor ones. I can sell the tract quicker than any I ever sold as soon as proof is made. I will send

Mealey $100 next week for cutting trail and etc. And I want you to go up and stay with him as soon as you get all filed on and see that the trail is cut through the best for I will be out there with a party in a very short time, maybe ten of them, so as to have them see the tract beforehand and have money ready and etc.

I think I will be there inside of fourteen days. Wire me at La X Monday or Tuesday how many filed and send names and descriptions filed on and be sure to get that fellow to advertise. We can pay him within a few days but do not allow the adds to be delayed.

Will keep you posted of every day of my whereabouts and what I am doing. When you leave Roseburg, let me know where to write.

PUTER."

Marked "U. S. Exhibit 84."

Q. Where did you receive that letter, Mr. McKinley? A. Albany. **[535—367]**

U. S. Exhibit No. 85.

"January 28th, 1900.

Friend Horace:

I arrived here last evening and learned today that Withee has gone to Europe and will not return for six months or more. Left here last Wednesday with his wife and Rose. He got on another spree after New Years Day and went up to La Salle so I suppose his wife is a going to try and cure him in Europe. Well, he is cured already.

I suppose that will settle the deal for you know none of those fellows will do anything. I am afraid now that I will have to let those certificates go down

cheap for I am broke and need as you know, lots of money now.

I expect to be out there with some one inside of 15 days; that tract if we can get it, I can sell to several different parties. There will be no trouble about that. Now I hope that you have it all filed on.

Well, I will see every one here tomorrow and next day and see what I can do and will let you know by wire.

Resp.

S. A. D. P."

Marked "U. S. Exhibit 85."

Q. You received that where?

A. At Albany. **[536—368]**

U. S. Exhibit No. 86.

"La Cross, Wis. Jan. 29, 1900.

H. G. McKinley,

Salem, Oregon.

Withee New York cant do anything here will I go New York.

S. A. D. PUTER."

Marked "U. S. Exhibit 86."

U. S. Exhibit No. 87.

"Jan 29

Friend Horace:

I received your wire asking for another 100; well I have now but $10 dollar and when I get to Milwaukee I will have to borrow so I can't send it unless I close the deal here and that looks dam slim.

Hyde will be here tomorrow and I will submit a proposition to him but I don't think that any of them will take it. Haskell is the only one and as he

has gone to N Y for to be gone six months, I think the chances are slim. I wired you wanting to know whether to go down there or not. I don't know whether it would do any good. I hardly think it will. Well, I will do ~~what~~ the best I can. Now get those filings on some way, for as I said, I will have some one out there soon and if that timber is as you say it is a go, but get all you can and as soon as I get my money I will send it to Mealey and let you know. I meet Hyde tomorrow. I will have to borrow a few dollars from Jerry to go to St. Paul tonight, as I got a wire to come up there but I will be back here in the morning at about noon and tomorrow night I go to Stillwater, so by the time you get this letter I may be in Saginaw, New York or in hell for all I know, so don't wire until you know where I am.

Yours truly,
STEVE." [537—369]

Marked "U. S. Exhibit 87."

U. S. Exhibit No. 88.

"Minneapolis Minn Jan. 30, 1900.

H. G. McKinley,
Salem, Ogn.

Will probably wire money soon file all parties somehow Lacrosse tomorrow probably go New York.

S. A. D. PUTER."

Marked "U. S. Exhibit 88."

U. S. Exhibit No. 89.

"Minneapolis, Minn. 1-30-1900

H. G. McKinley Esq.,
Albany, Ore.

Dear sir:

Now in regard to wiring any more money, that is out of the question unless those La Crosse parties come to time. However, I am going down there tonight and will do what I can and if I fail to make a deal there, it will be useless to ever try it again.

Just as soon as I get the money, I will wire you. I presume the best thing I can do is to go right on to New York and see Whithee.

Regarding those filings, don't fail to get all claims filed on. I presume you have them by this time anyhow. From La Crosse I go straight through to Saginaw, Mich., to make arrangements with some parties there to go with me to Oregon and look over those lands and if satisfactory will have the money ready at the time of final proof. I think this is a sure go. I am putting **[538—370]** in altogether 56 quarter sections. I may possibly get on to one or two quarters that are not filed on, but it will be easy enough to switch. As soon as I get money I will wire it to Albany, to be paid to Maley for cutting roads etc., and will write him full particulars in the meantime, also will wire you, for I want you to be with him and see that those trails touch about all the quarter sections and go by several corner posts, as the man that is going out will want to ride horseback most of the time in making the examination, so if there is good work done on the trails, it will

only require from 2 to 3 days to take him through.

At the same time, I am going to try and make a deal with the La Crosse party—Whithee, Mr. Hyde and another man and tie them up in this same Oregon deal if I can, so in case the Saginzw parties fail to take it, the others will, but I have no doubt but what I will make the sale to the Saginzw people. The price I am making the tract to them is $1000. per quarter, amount of timber per quarter section not less than 10,000,000 ft.

In case there is any way to dispose of those lands of yours, I will hold out those two sections, for they must go in with the other tract.

It will be no use for you to wire me after receiving this letter as there is no telling where I will be unless you hear from me by wire

Very truly yours,

S. A. D. PUTER."

I was called back here on the Red Wood deal and expect to go to California within the next ten days, or I may go to Oregon first.

S. P." **[539—371]**

Marked "U. S. Exhibit 89."

U. S. Exhibit No. 90.

"1/31/100

Friend Horace:

I interviewed all those fellows today, Goddard, Hyde and another party. Hyde goes to California this afternoon and of course would not talk timber at all. Goddard would go in if Withee would so to hell with La X. You never see me stop here again. Now I can't say whether or not to go to N. Y. for if I should go there and do nothing, it will put me back for a

time and be out money besides. I thought perhaps if Withee would put up $4000 with me and get Goddard to buy but I don't know. I hardly think he will do anything. I will wire you from Chicago or N. Y. in case I conclude to go. Dam it I need the money so dam bad now for expenses and in order to take the parties to see the 14–2 & 3 tract. I will decide tonight in Milwaukee, I leave for there in a few min 12–50, so I want you to wire me on receipt of this. How many filed and send description filed on as I stated before, also put seal on —— assignments that I sent back and forward to Chicago. Wire care Palmer House.

S. P."

Marked "U. S. Exhibit 90." **[540—372]**

U. S Exhibit No. 91.

"Appleton, Wis., Feb. 1st, 1900.

Friend Horace:

Well, I haven't heard anything from you for some time, I have been expecting a letter showing exact descriptions filed and date and etc.

I came up here to see what I could do with 'B' but he is not here. I tell you I am dam hard up, land poor and haven't got a cent—been borrowing for two weeks; I did not get the money on that check on Withee either.

Now, I go to St. Paul tonight and will leave Chicago for S. F. Tuesday evening, will be in S. F. next Saturday, and going straight to Eureka, and right on to Oregon and will have one and maybe two parties to look at the 14—2 & 3 tract and the first money I get I will send Mealey so as to have the trail cut.

Now you want to be awful careful how you talk to anyone regarding that tract; do not say one word about it; you know if parties out this way get on to it that we was offering that tract before sale before parties proved up, you can't tell where we would land. Be awful careful. I can get all the money I want to carry it providing the timber is as you say. I will try and get Goddard of La X to send a man out to look at those dam school secs. He is on the buy and if that dam fool Haskell would take hold, Goddard would take it all. **[541—373]**

Write me at S. F. and send me a few copies of papers with timber filings in. You ought to have sent me that before, also the blanks that I returned to you for to get seal on. Send to Palace Hotel, S. F.

Very truly,
PUTER."

Marked "U. S. Exhibit 91."

U. S. Exhibit No. 92.

"Chicago, Ill., Feb. 2, '00.

H. G. McKinley,
Roseburg, Ore.

No money better wire me go New York your expense.

S. A. D. PUTER."

Marked "U. S. Exhibit 92."

U. S. Exhibit No. 93.

"Chicago, Ills., Feb. 3rd, 1900.

H. G. McKinley.

Will be New York Monday morning Waldorf

Astoria—Please forward.

S. A. D. PUTER."

Marked "U. S. Exhibit 93."

Q. Were you at Roseburg at that time?

A. I was at Roseburg, yes, sir.

U. S. Exhibit No. 94.

"2/3/1900.

Friend Horace:

I leave for N. Y. this eve at 10 and if I find Withee I will know Monday, providing he is sober, whether I can make a trade or not. I am afraid it is a wild goose trip. Well, hell, how can I wire you **[542—374]** money when I haven't got it myself. I will send it as soon as I get it. I haven't had time back here to make a dam sale and have to borrow money to go to N. Y. on. I will wire money as soon as I get it. I will be in S. F. on or before Feb. 14.

Very truly,

STEVE."

Marked "U. S. Exhibit 94."

Q. There seems to be a hiatus here between the 3rd of February and the 18th. Do you remember whether you received any letters between those dates?

No, I do not think I did. I have a telegram here from him, the 14th, and there are those three letters that I brought over, Mr. McCourt. Maybe one of those is in between.

Mr. McCOURT.—I presume with an explanation, I might introduce this telegram of Withee into the record. It shows the connection.

U. S. Exhibit No. 95.

"New York via Roseburg, Ore.,
Feb. 5, 1900.

H. G. McKinley,
Salem, Ore.

Puter here can do nothing for you my answer final.

N. H. WITHEE."

Marked "U. S. Exhibit 95."

Q. Now, you can read that telegram, Mr. McKinley.

A. This is from Omaha, Nebraska, February 14, 1900.

[U. S. Exhibit No. 96.]

"H. G. McKinley, Albany, Ore.

Say nothing more about fourteen three deal telephone me Friday evening San Francisco.

S. A. D. PUTER." **[543—375]**

Marked "U. S. Exhibit 96."

U. S. Exhibit No. 97.

"Sunday 18, 1900.

Friend Horace:

I received one letter yesterday written Thursday afternoon; well, all you have to do is say nothing to no one.

To hell with that Northern Pacific man. No one can prove anything, just keep quiet. One thing, you had no right to tell anyone you had that land for sale, that man you wrote to in West Superior has offered to everyone in that country for $5 per acre. I only seen one man there and told him all about it

and to say nothing, for he is a man that understands all about the bus and has lots of money, his name is I. S. Stevens of Saginaw, Mich., and he is in Portland now. I have known him a long time. I was to take him on to the land and if it was all right Stevens was to handle the *buis* when it came to proving up. So that man Hunton went right to my man back there and offered him the same land at $5 per acre. I have been holding it at $7.50 per acre. Also another man offered it for $5 per acre and he is a tin horn gambler at West Sup. so that put me in a hell of a position.

My man's name is McClure of Duluth, and when both those men came to him, he wrote and wired me to come up there, which I did.

So for *Cr*ist sake, either write or wire that man Hunton to declare everything off. If we are not mighty careful we never will swing that tract. Now what I **[544—376]** want you to do is say nothing to no one, only to those parties that filed, and say nothing to them unless they tell you something they heard for we will have to post them up just before they file.

Now I will send Mealey $75 today for that is worth more than it is worth to cut a trail and I wish you would go with him and have a trail cut through the green timber if possible and only one trail is all I want and that must go through the middle of each section, may wind around of course through the good timber, you see it will require more time than anything else in selecting the proper place for the trail not to get it in any bad places, and touch some

of the corner posts when possible and have the trail so a man can ride a horseback all the way through.

Now on receipt of this I want you to strike right out to Mealey's and take a trip with him and get him started in right off, for I will be on the ground anyway by March 1st. So he has to rustle. I will enclose the check in this so you can take it right up with you. Now regarding the other claims. Dam it, I haven't got the money to spare, or I would send it up. I will have to send up now to Eureka for a hundred or so. I bought a lot of that school land and haven't sold a darn claim. What you ought to do is write Goddard at La X to come or send a man out and you will pay his expenses for to look at those 321/4. He is the only man that I know who might buy them. He wanted to go in bad but Withee wasn't there and Withee will do nothing, in fact he has almost lost his senses; the sprees that he has been on lately **[545—377]** and medicine that he has been taking has knocked him plum out.

Now if there is any chance to get scrip from Odell get it right off at $3 and don't fail to get right to work for I will be there on or before March 1st with a man.

Resp., S. A. D. P.

4 P. M.

Since I wrote you I received your letter with Mealey's letter enclosed. Now don't you think you could get a few of Mealey's friends to do down and file, get Mealey and his father, mother and sister; I would agree to pay them one hundred providing they would pay their own expenses down on first

trip. We ought to get at least eleven more 1/4, that will make 60 with the two school secs., so try and get them in some way.

Well, regarding Withee, I thought I wrote you he will do nothing; I offered him all kinds of propositions but he refused.

Now get Mealey to work as soon as you can and tell him that I will give him a new contract for his 500, you know we have to stand in with him by all means.

I will wire you as soon as I leave provided I leave before you get this or about that time.

STEVE."

Marked "U. S. Exhibit 97." **[546—378]**

U. S. Exhibit No. 98.

"Feb. 20, 1900.

Friend Horace:

Well, I start for Coos County tomorrow, and expect I will have a hell of a trip, have to go up there on one of the darndest old tubs you ever see. Will arrive there at 10 A. M. Sat. and I expect to leave there Monday for Salem and will be in Salem Tuesday and Tuesday night will go back to Albany with my man and Wednesday take him up to 14–2 & 3 just for a flying trip. By the way Stephens from Portland may go down to see that land, so in case he does, show it to him and be darn careful how you talk to him; don't say much. The best thing for you to do is to get ahold of Goddard the first thing don't let Thompson at Eugene get him. He will buy those 32¼ that is the 24, for we want to

(Testimony of Horace G. McKinley.)

reserve two sec. You want to show him 14–2 & 3 also and don't offer the tract to no one less than $7.50 per acre. I will send it to Sadie. Well now, I hope you have gotten Maley to work and he will do a good job. He ought to for 75 dollars. I presume you will be back in Albany Friday or Sat. don't say to Gildner word or anyone else where I am or what I am doing. I don't want that dam gang keeping tab on me.

I may call you up from Marshfield.

S. A. D. P."

Marked "U. S. Exhibit 98." **[547—379]**

U. S. Exhibit No. 99.

"Received at Albany, Oregon.

San Francisco, Feb. 20th, 1900.

H. G. McKinley,

Albany, Ore.

Any snow and when will you be at the trail.

S. A. D. PUTER."

U. S. Exhibit No. 100.

"Ashland, Ore., Feby. 24, 1900.

To H. G. McKinley,

Brownsville, Ore.

Will be in Salem tomorrow morning, going Roseburg at noon.

PUTER."

Marked "U. S. Exhibit 100."

Q. About the 20th now, Puter came back to Oregon, or reached Albany there, a little after the 20th?

A. Yes.

Q. Can you give the date there when he reached Albany?

(Testimony of Horace G. McKinley.)

A. Tuesday the 20th. That is the 20th of February, wasn't it?

Q. Yes.

A. To Salem on the morning train. Returned on night train. 21st to Brownsville on the afternoon train. No, I have not the date, when he reached here. I have made no mention of it. Except the 24th. Went to Albany on the morning train. Left for Salem, went on through to Portland, and returned on the evening train. Met Puter. **[548—380]**

Q. Met Puter on the 24th?

A. 24th, yes, sir.

Q. Now, when did Puter again leave for the east, if he did leave, or leave for California?

A. Well, I have here that I met him on the train the 25th again, and I don't know when he left.

Q. Did he go east after that again?

A. Yes, sir.

Q. In a very short time, didn't he?

A. I think he did, yes. Yes.

Q. Well now, I will read a letter from California.

U. S. Exhibit No. 101.

"3/4/1900.

Palace Hotel,
San Francisco, Cal.

Friend Mc.

I received a letter from Mealey. I think we had better stand in with him. I just wrote him that I wanted that trail cut so see that it is done, and tell him that I will change the contract when I come up.

I leave for Eureka tomorrow and will be in Salem on or before the 12th.

Resp.
STEVE."

Marked "U. S. Exhibit 101."

U. S. Exhibit No. 102.

"March 5, 1900.

Palace Hotel,
San Francisco, Cal.

Friend Horace:

I wish you would send me several of those **[549—381]** papers with those filing ads in, also showing the last batch. I believe they will be in the Lebanon paper. I made a deal with Peyton on the Coos Co. land. He has paid Baldwin the $15,000 so now if I can work things just right I can sell B a tract and I will want your help, so let me know where you will be all the time so that I can get a letter to you. I expect to go to Eureka tomorrow or next day. Am waiting for my party and when I get there I will raise all the money I can and get to Oregon as quick as possible. I wish you would look up all the good school land that you can that can be cancelled. I will write you again tomorrow.

Very truly,
S. A. D. P."

Marked "U. S. Exhibit 102."

U. S. Exhibit No. 103.

"San Francisco, March 6, 1900.

Palace Hotel.

Friend Horace:

I am still here. I got two telegrams from my par-

(Testimony of Horace G. McKinley.)

ties in the East from Minneapolis stating they would be here on Friday 8th and to engage berths on the steamer for Saturday for Eureka, so I am killing time waiting and can't get a cent until I get to Eureka. I will get out of there as soon as possible. I will go right on via Crescent City to Grant's Pass.

That was a dam short conversation over the telephone this eve; you could have found out that I was here for a quarter just as well. I have written you two letters to Albany. How about the trail. Have you got anyone to work. **[550—382]**

Now, do not forget to look up all the good ¼ secs. that is subject to cancellation that you can find for I will want to get a batch of them in order to raise all the money I can for the Linn Co. tract. I presume I will hear from you Thursday noon providing you get the letter off tonight.

Very truly,

PUTER."

Marked "U. S. Exhibit 103."

Mr. McCOURT.—I don't seem to have any letter of March 8th.

A. That is one of those I brought over from the hotel. It is in one of those three envelopes I handed you.

Q. (Mr. McCOURT.) Oh, it is one of those.

U. S. Exhibit No. 104.

"March 8, *190*

Palace Hotel,

San Francisco, Cal.

Friend Horace:

I sent letter to Albany same date of this. Send after it.

STEVE."

Marked "U. S. Exhibit No. 104."

U. S. Exhibit No. 105.

"March 8th, 1900.

Palace Hotel,

San Francisco, Cal.

Friend Mc:

Why the divil don't you write when you say you will. You called me up by phone and said you wanted to write. Now I could have went to Eureka today on the North Fork, but wated to get your letter thinking **[551—383]** it was important, no letter. I will go up there. Now on Saturday I got a despatch was forwarded from Eureka. It was from a man at Minneapolis stating to meet him here the 13th. He is one of the best men I found in the east for the Linn Co. tract. I wired him that I would meet him, so I will have to come right back on return boat from Eureka and I expect to go right on to Salem probably will be in Salem the 16th. Let me know how everything is and if you have got Maley on the trail, for I will be there shortly with some one. In case that man Goddard is there, why don't you take him out on 14 2 & 3? On receipt of this

I want you to get two blank assignments and do the notary buis, and send them right down to me they are some that I want to assign to some one, so date them January 3rd, 1900, and *and* fill them all out except putting in name to whom assigned to and description. I can do that on the typewriter also get me a blank promissory note, one of those that they have in Lad & Bushe's Bank or Portland Bank, and send it also. Get them here by the 13th.

Very truly,

PUTER."

Marked "U. S. Exhibit 105."

Q. Now, will you please read the letter of March 9th, from the Palace Hotel, San Francisco?

U. S. Exhibit No. 106.

"March 9th, 1900.

Palace Hotel,

San Francisco, Cal.

Friend Horace:

Your letter at hand today and telegram also. It **[552—384]** is no use wiring to me for money, for I haven't got a cent. I have borrowed from Larry and Emma now so dam much that I do not want to ask for any more. My man from Minneapolis just got here this evening and we go to Humboldt tomorrow. I also got a telegram from Smith of Minneapolis, for to meet him here the 13, so now I do not know how I am to do it. I *wires* him that I would. He is the best man I have for that Linn Co. tract and I must meet him. His cruiser Mr. Kribs I have been expecting to see ever since I came back here but he is up in the sugar pine belt, he has not

got back. At any rate I will have to get back here 13 or 14 to see Smith and I presume I will go on to Oregon with him. In case I can get any money at Eureka, I will wire some to you. I will do what I can there. I don't like this man very well that came out he will not like the country. I am afraid he is too chicken hearted for those mountains. I think you had better go and stay with Maley and try and get the trail cut it will be hell to take men through in a short a time as we have and besides I want to know just where to take them and that is through all of the best timber, for you know I will have to show them the timber before they put up the money, so try and get the trail cut right *of*. I will be there by March 16th or 17 *shuir*.

Very truly,

S. A. D. P."

Marked "U. S. Exhibit No. 106." **[553—385]**

Mr. McCOURT.—March 20, 1900.

Mr. LIND.—Do you think it is important to cumber the record with that?

Mr. McCOURT.—There is a reference to Kribs in it. This letter is written—

A. What date Mr. McCourt?

Q. March 20.

A. He was in the east then somewhere. I think the envelope—there is an envelope there stamped March 21st, if I remember right.

Q. March 21st shows Spokane.

A. Well, it is that letter.

Q. It does not make any difference where it was

(Testimony of Horace G. McKinley.)

written from. A. No.

Q. It was somewhere east of here? A. Yes.

Q. You received this where? Albany, I guess.

A. Yes.

Q. March 20th it is dated. The envelope which appears to belong to it is dated March 21 at Spokane, Washington. Received in Albany March 22d or 23d.

U. S. Exhibit No. 107.

"March 20th, 1900.

Friend Mc.

Why in hell didn't you mail those two assignments to me last night as I told you to. I called at the P. O. several times up to 3 P. M. and no sign of them. That is a hell of a way to do anything. Now I have no assignment to those 4¼ and cannot get them in time Saturday.

I talked to Bridges over the phone today and he **[554—386]** told me that the proof could be put in on those claims any time during the ten days but as a matter of course, he would have to suspend the proof pending the contest. I told him that I had talked to several of the parties who filed and they all said they would put up a few dollars rather than have to fight the railroad people, that I thought they had no show anyway, and I had an idea that we could compromise, so when you see him, you can tell him that what I meant by compromise was that we would rather pay a few hundred to get them to withdraw than to waste time fighting them.

Now, don't you say but little in regard to paying anything. Do not say over 250 dollars for if you do they will think we are afraid. I think that after

(Testimony of Horace G. McKinley.)

about ten or twelve of the best ones put in proof that we can buy them out cheap. Now get to Roseburg and see all of them parties that prove up before Apr. 10 and fix them and tell them that it is all a bluff but in no way you give away the fact that we are agoing to buy them out. Leave that to me I can fix that.

Resp. S. A. D. P."

Marked "U. S. Exhibit 108."

Mr. McCOURT.—This could not have been in Spokane. It is somewhere here in Oregon.

A. What date is that Mr. McCourt?

Mr. McCOURT.—March 20th. **[555—387]**

U. S. Exhibit No. 108.

"Appleton, Wis., March 24th, 1900.

Friend Mc:

Well, I arrived at Minneapolis on time yesterday at/2:30 and went up and wound Salzer up to the Queen's taste. He said he would go down this morning and send a draft of $1000 to Ladd and Bush to be paid to you on receipt of certificate and assignments to those lands. I instructed him what to do. He has to go to La X to do it. He showed me a letter from the Western Union Company stating that they could only wire $100 at a time. I told him to have the bank wire Glass to secure those certificates that a draft of $1000 was mailed to said Glass act. But afterwards, I told him to send the dft as I had fixed it up out there so that you could hold the land until April 2d and besides I thought you would not be there to attend to it. Also he knows that I am here. I told him that I had to be in Salem March 31st and

in case the matter was not fixed up by that time I would attend to it, so he concluded he wanted me to attend to it, so now do not do anything until March 31st for if you date those assignments sooner than that it will raise hell. Mind what I say. Also you will want to put a 10 cent revenue stamp on each assignment and cancel it and sign my S. A. D. P. to each stamp and be careful and compare each assignment and make no mistake. It is so dam easy to make mistakes. I have had to make corrections on every one of those that you got down in Salem the other day.

When that dft gets to Ladd & Bush you can give the clerk a check on Ladd & Bush for $800 and they will give you the cert. or if you prefer to wait **[556—388]** until I come, I will give you the $800 and you can get the cert and then when you get things fixed up O. K. turn them in to the bank and get the dft. that will be the best way, for I will be at Albany the morning of the 1st, Sunday without fail and will bring a $800 dft with me and can give it to you there.

I expect to fix up a deal here today with Baldwin and will leave Chicago Monday eve for S. F. where Kribs will join me and go to Albany.

I told Salzer to get all of those secs that he possibly could at such prices and he will take all those other secs just as soon as he gets those certs back here and see how the transfers are made. In fact you are a dam fool to give them at any such figure any way it is a picnic for him.

Well, now, in case those trails are not made you

(Testimony of Horace G. McKinley.)

had better leave the state.

Resp.

S. A. D. P."

Marked "U. S. Exhibit 108." **[557—389]**

Mr. McCOURT.—Oh, yes, you want to read that telegram. I offer the telegram that Mr. McKinley has there.

A. The date is blurred there. I can't make that out.

Q. Somewhere about the first of April, isn't it?

A. I should think it was. This is sent from Ashland, Oregon. It says, "H. G. McKinley, Revere House, Albany, Oregon. Is Kribs in Albany, Answer Train sixteen, Grants Pass. Puter."

Marked "U. S. Exhibit 109."

Q. Kribs did arrive at Albany on the first of April, didn't he?

A. Either the first or the second.

Q. And Puter on the second?

A. I can tell you in a moment here.

Q. Or no, Puter on the 3d?

A. It is a little indefinite here, the way I have got it. (Referring to diary.) I have got it "Placed under bonds. Released Kribs and Puter, started from Mealey's with Kribs, Barr and Brandeberry the 3d." They must have got there the 3d.

Q. What day were you arrested there in Albany?

A. I was arrested Sunday night, the first of April.

Q. And was Kribs there then? A. No, sir.

Q. When did he arrive with relation to your arrest?

(Testimony of Horace G. McKinley.)

A. I don't know whether it was the next day or the second day.

Q. In what connection was that arrest of yours?

A. In connection with these lands.

Q. You were charged with—

A. Subornation of perjury. **[558—390]**

Q. Subornation of perjury in regard to the timber and stone entries? A. Yes, sir.

Mr. LIND.—Well, really, I think it is immaterial, your Honor. It cumbers the record. Was it in connection with the claims involved in this suit?

COURT.—Yes, claims involved in this suit, as I understand it, these 57 entries.

Mr. LIND.—Well, all right.

Q. Who went on your bonds?

A. Mr. Puter.

Q. He had arrived there on the 2d of April?

A. He arrived there on the 2d, yes, sir.

Q. What did you do as soon as you had been released upon bail there in that case?

A. I have it here that I started for the Mealey's on the 3d.

Q. Who was with you?

A. Mr. Kribs, Mr. Puter, Mr. Barr and Brandeberry.

Q. Now, when you reached Mealey's there, what did you do?

A. We got in there in the evening of the 3d; stayed at Mealey's all night; Wednesday morning, the 4th we went up the trail into the mountains; stayed there Wednesday night, Thursday night, and

(Testimony of Horace G. McKinley.)

returned Friday to Mealey's.

Q. Did Mr. Kribs understand that the lands had not been proved up on then? A. Yes, sir.

Q. Did he understand that your arrest was in connection with those same lands?

A. I suppose he did.

Q. Now, how long was it after that before you started to offer proof on any of those claims at Roseburg, after the date that you and Kribs were there in the woods?

A. Well, some of the proofs were set for a certain date, **[559—391]** but they were postponed. Do you want to know what time the proofs were actually made?

Q. No. What was the cause of the postponement?

A. Well, I only have here that it was because the Register and Receiver was at Portland. I have that in here somewhere. I can find it.

Q. Wasn't that upon account of those contests?

A. That the proof was postponed?

Q. Yes. A. Well, I couldn't say.

Q. Well, never mind what the cause of it was. You came back from Mealey's there to Albany. Did Kribs come back to Albany with you?

A. I can't remember whether he did or not.

Q. Well, where did you next see him?

A. When did I next see Kribs?

Q. Yes. A. I can't remember that.

Q. Well, was he in Albany when this final proof started down there? A. In Roseburg?

(Testimony of Horace G. McKinley.)

Q. Yes.

A. Well, I have no record of that here.

Q. Well, referring to your recollection?

A. Yes. Yes, he was there when they made their final proof.

Q. When they commenced to make them?

A. Yes, sir. But they were down there, you understand, about a week or ten days before that to make it, and it was postponed. I don't think Kribs was there at that time.

Q. Well, wasn't there several days consumed in taking testimony **[560—392]** in those contests there before any final proofs were actually concluded? A. Some few days, yes.

Q. Wasn't there a trip made to Tacoma after the parties had reached Roseburg, before the proof was concluded? A. By whom?

Q. By Puter and the Northern Pacific people?

A. I can't remember that circumstance very well, if Puter went up to Tacoma. I think he did, but I don't remember him going to Tacoma.

Q. Wasn't that the cause of holding the proofs from the 12th of April until the 18th?

A. Were the proofs set for the 12th?

Q. I think so, or on the 13th.

A. Well, I can't remember what was the cause of that delay, any more than I have got it here that the Register and Receiver went to Portland, and they were postponed. In fact, I think they were postponed twice, but what that postponement was for I cannot recollect clearly.

(Testimony of Horace G. McKinley.)

Q. Didn't the entrymen remain there in Roseburg five or six days, quite a number of them, while that arrangement in Tacoma was being consummated?

A. Well, I don't think it was that long—five or six days. It might have been a couple of days. But I don't think those fellows—if you will just wait a moment I have something concerning that here. I have here the 10th of April, went to Roseburg with nine parties. Register and Receiver at Portland. Proof postponed. Sent six parties on the land. Left for Tacoma at night.

Q. What date is that?

A. The 10th day of April.

Q. You went to Tacoma too? A. Yes, sir.

[561—393]

Q. Who went with you?

A. I went alone.

Q. What was the purpose of your trip to Tacoma?

A. My wife was there.

Q. It had nothing to do with these lands?

A. Not at all.

Q. Now, when did you return to Roseburg?

A. I arrived in Tacoma at five P. M. Wednesday, the 11th. Thursday, the 12th I left for Salem at noon. Went on to Roseburg with men the 12th. The 13th, returned on the morning train to Albany. On the evening train with more men to Roseburg. All parties returned home. Postponed until Wednesday.

Q. What date would that be?

A. That was Saturday, and Wednesday would be

(Testimony of Horace G. McKinley.)

the 18th of April.

Q. Now, then, Friday and Saturday, while you were there, what were you engaged in?

A. Well, I returned on the morning train to Albany. On the evening train with men. More men to Roseburg—I took them down Friday night. And I learned Saturday for some reason that it was to be postponed till Wednesday, so we went back again.

Q. Now, how many men was it that you sent back there till Wednesday, and who were they?

A. All parties, I have it.

Q. All parties? A. Yes, sir.

Q. So that all of those people who afterwards made proof on April 18th, you had to take them back the third time? A. Yes, sir.

Q. To Roseburg? A. Yes, sir.

[562—394]

Q. Now, then, laying aside your book for a moment, what were the transactions there leading up to the trip to Tacoma, and the postponement—the trip to Tacoma by Puter?

A. Well, if Mr. Puter made a trip to Tacoma, I suppose it was in connection with the contest that the Northern Pacific had started against these claims.

Q. How long before this proof date had the Northern Pacific interposed contests against the claims?

A. Quite a while. I don't know the date, but that would be long before I was arrested in Albany.

Q. Some three weeks or more before you were arrested in Albany? A. Possibly so.

(Testimony of Horace G. McKinley.)

Q. Was there a contest against each and every claim, as you recall? A. Yes, sir.

Q. Now, how much of a hearing did you have there in Roseburg, over those contests before the compromise was effected?

A. I think there were two parties—two claims that they examined witnesses on, or claimants.

Q. And how much time did that consume?

A. I wouldn't be sure, but I think about two days.

Q. Was Mr. Kribs there during that time?

A. I can't say as to that.

Q. You know he was in Roseburg, at least, during the time? A. I do not.

Q. You don't remember that? A. No, sir.

Q. Now, were you consulted on that compromise?

A. Yes, sir.

Q. Did you ever meet and have a conference?

A. Yes, sir.

Q. Who was present? **[563—395]**

A. Mr. Puter and myself.

Q. Did you meet with the Northern Pacific people? A. I did not.

Q. What was the arrangement effected between yourself and Mr. Puter?

A. As it was finally carried out.

Q. That you would accept a settlement which would give to the Northern Pacific twenty-four claims and you would retain thirty-three.

A. That we would get parties to relinquish on 24 claims, providing they would withdraw their contests on the remaining 33, yes, sir.

(Testimony of Horace G. McKinley.)

Q. That was later carried out?

A. Yes, sir.

Q. Did you get the relinquishments?

A. Yes, sir. With the exception—

Q. What did you have to pay for those relinquishments?

A. I cannot remember distinctly. I think something like $25 apiece.

Q. Averaged about that? A. Yes, sir.

Q. Now, after that was effected, you went ahead with the proof. Did you go and chaperone the parties back there again, or did they go back of their own accord, or did they get there on Wednesday the 18th?

A. Well, I can't remember as to that. I suppose they were notified.

Q. Well, look at your diary there, about the 17th, and see if you took them along?

A. My diary is all a blank on that week. I haven't anything there from the 15th to the 22d.

Q. A pretty arduous week. You didn't put it down?

A. I didn't have time to put it down, I suppose.

Adjourned until to-morrow morning at 10 A. M.

[564—396]

Portland, Ore., April 22, 1910, 10 A. M.

Mr. *EU*LAND.—If the Court please, the District Attorney has prepared in form the amendments allowed on the 19th, and yesterday I drew up the answers of the defendants, and they are ready to file. I spoke to the District Attorney and asked whether

(Testimony of Horace G. McKinley.)

he would object if in those answers I inserted some averments making it more specific—the former answers—as to the notice of the Interior Department prior to the issuance of patents, and the District Attorney kindly said that he had no objection to my doing so. But in drawing it up I say that I do so by leave of court, so that I will not file it without calling your Honor's attention to it.

COURT.—Very well. That will be satisfactory.

Mr. McCOURT.—May I ask if they are so broad that the complaint will not cover them?

Mr. *EU*LAND.—Not as I understand it.

Mr. LIND.—They would not require any amendment.

Mr. McCOURT.—The replies already in may be considered replies to this matter?

Mr. *EU*LAND.—It is covered by the general reply.

COURT.—Very well. That is satisfactory.

[565—397]

[Testimony of Horace G. McKinley, for the Government (Resumed).]

HORACE G. McKINLEY, resumes the stand.

Direct Examination (Continued).

Q. Now, to whom did you say you delivered those relinquishments that you secured for the Northern Pacific Railroad Company?

A. The officials of the Land Office.

Q. You delivered them to the officials?

A. They were delivered there to them.

Q. Didn't you deliver them to the Northern Pacific Railroad Company, the representatives of the

(Testimony of Horace G. McKinley.)

company, and didn't they deliver them to the Land Office?

A. I could not say as to that. I don't remember.

Q. The contest affidavits, they were served on the several entrymen, and by them delivered over to you? Do you remember the notice of contest and affidavits?

A. The notice of contests by the Land Office?

Q. Yes.

A. Were delivered, you say, by me to the entrymen?

Q. No, to the entrymen, and by them to you.

A. I don't remember.

Q. You do recall that you had more or less transactions with the entrymen and explaining to them?

A. Yes, sir.

Q. What the thing was, and that you would take care of it? A. Yes, sir.

Q. You did take it on yourself to look after that contest affair? A. In most cases.

Q. In behalf of the filers?

A. In most cases. **[566—398]**

Q. You employed counsel? In fact, the only attorneys that were employed in behalf of the contestants were employed by you and Puter?

A. Yes, sir.

Q. None of the contestants appeared by attorney, except the attorney employed by you people?

A. Yes, sir.

Q. Whom you paid? A. Yes, sir.

Q. Now, how many trips did you make up there to Roseburg in that affair?

(Testimony of Horace G. McKinley.)

A. From start to finish, you mean?

Q. Yes.

A. Well, I would have to look that up. I cannot remember all of them. Possibly four or five—maybe six, maybe seven.

Q. Maybe seven?

A. Well, I don't think there were that many.

Q. You took at least three parties up there, didn't you, to file, yourself, accompanied them to Roseburg to file?

A. I will have to consult my book on that.

Q. Well, can you tell by consulting your book?

A. I can tell the dates that I was in Roseburg. I cannot tell whether I took up parties at that time. I don't know whether I can or not. I cannot tell what is in the book without referring to it. Shall I do that? Mr. Tarpley took up some of the parties.

Q. Well, look at your book and see if you can do it.

[567—399]

A. I made one trip on January 18th. I made one trip on the 30th of January; made one on February 25th. Well, now, as that was the last filing, why, the next time I went, of course, would be—

Mr. *EU*LAND.—February 26th was the last filing.

A. Yes, that was the last filing. I went down the 25th, and the next time I went I went in connection with these cases. I suppose it would be the time of the hearing.

Q. Well, the next time you went to Roseburg was April 9th? A. The 9th, yes, sir.

Q. Now, between April 9th and April 31st, you

(Testimony of Horace G. McKinley.)

went to Roseburg several times—three or four times?

A. No, not three or four times. I was there once or twice—twice, I guess—between that and the 31st, you say?

Q. Yes. A. The 31st of May?

Q. No, to the 30th I mean, of April.

A. No, I wasn't there.

Q. What?

A. I haven't got an account of it here.

Q. Well, you were there on the 19th?

A. The 19th of April? I have got a blank in there.

Q. Yes, you were there at the time those proofs were made.

A. Yes, I suppose so. I have not got that down there, Mr. McCourt. I have left a couple of weeks there out.

Q. And you went back again on May 16th or 17th, when they proved up, made some more proofs?

[568—400]

A. Of May?

Q. Yes.

A. Yes. Yes, it is about half a dozen times, I think, altogether.

Q. About eight times all together?

A. Eight times?

Q. On each of those occasions, or most of those occasions Bas. Wagner or Tarpley were along?

A. I think so.

Q. Well, now, when those proofs were made, up until that time, you had paid all the expenses of the

(Testimony of Horace G. McKinley.)

entrymen in their different trips to the land and to Roseburg?

A. In very near all cases, I think yes, sir.

Q. And who paid for the publication of the notices?

A. I did. In the Brownsville "Times," you refer to?

Q. You published the entire 57 entries in the paper? A. Yes, sir.

Q. What was the cost per entry of publication?

A. Well, I wouldn't be sure. I think it was $7.50 each.

Q. You got a little reduction by reason of having a large number? A. Yes, sir, I think so.

Q. Did you make a contract with the paper men before you gave them the publication, as to what they would charge you?

A. Well, I am a little mixed up on that reduction business. I know we were talking of re-advertising, and I was trying to get a reduction then. Whether I did on the start, and whether it was $7.50 or $10, I am not clear on it. **[569—401]**

Q. It was one or the other? A. Yes, sir.

Q. Did you republish any of the notices?

A. No, sir.

Q. When did you make payment for that publication, prior to the proof, or afterwards?

A. I cannot say. I think it was afterwards, though, although it might have been prior.

Q. The newspaper man usually insisted on the

(Testimony of Horace G. McKinley.)

payment before he furnished you the proof, didn't he?

A. Well, in some cases I was quite well acquainted with the editors of that paper there, and they might have allowed me to pay it later on or before. I cannot say. I know that I had several cases like that. That is, there have been several notices put in at my direction, and some times I would let the thing go till later.

Q. Well, now, you, together with the people that were assisting you, had attended to all the details up to the time of proof? A. Yes, sir.

Q. Now, then, when the parties proved up in Roseburg, what did you do with them immediately upon proof being submitted?

A. Took a mortgage—proceeded to take a mortgage on each of the claims.

Q. Proceeded to what?

A. Take a mortgage on each of the claims.

Q. Did you take a mortgage?

A. I think so.

Q. What was that for?

A. To secure the amount. **[570—402]**

Q. Secure what amount?

A. I had paid for the land.

Q. What?

A. That had been paid for the land, and expenses, to the Government, $75 to themselves, $100 location fee—from $75 to $100 location fee.

Q. You took the same amount of mortgage in each case? A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. The expenses were not the same in every case?

A. No, sir.

Q. The purchase price was not the same in every case? A. No, sir.

Q. And how many mortgages did you get there at that time? A. Thirty-three, I think.

Q. Your purpose in taking those mortgages was to secure your location fee?

A. Secure the location fee and secure the amount of money loaned on the land.

Q. Had you loaned any money on the land?

A. I was the agent, yes, sir.

Q. Did you get any location fee?

A. Yes, sir.

Q. Who paid the location fee?

A. Mr. Puter.

Q. You had not located him on any claim, had you? A. No, sir.

Q. What? A. Well, yes. Yes, I had.

Q. You located him?

A. That is, he was one of the locators. **[571—403]**

Q. He didn't pay you anything, though?

A. That was counted in just the same.

Q. It was? A. Yes, sir.

Q. And what part of that location fee did you get?

A. One-half.

Q. Who got the other half?

A. Mr. Puter.

Q. You had already, hadn't you, when you took those mortgages, entered into a contract with C. A.

(Testimony of Horace G. McKinley.)

Smith to convey title to him? A. No, sir.

Q. You hadn't? A. No, sir.

Q. Hadn't done that? A. No, sir.

Q. You had agreed with him, however, that you would convey the lands to him?

A. No, sir.

Q. You had not? A. No, sir.

Q. Well, what was the reason that you took deeds on the same day that you took a mortgage?

A. Didn't take any deeds to C. A. Smith.

Q. Whom did you take them to?

A. John A. Willd.

Q. Who was he? A. I don't know.

Q. Did you ever know him? A. No, sir.

Q. Have you ever found out who he was or what he was?

A. I found out he was a live person, living in the east.

Q. And that is all?

A. That is my connection with him. **[572—404]** That is all my knowledge of him.

Q. And you didn't know of him in the transaction at all, did you? A. Not personally.

Q. You knew that Fred A. Kribs was there and represented C. A. Smith?

A. I didn't know whom he was representing. I knew, yes.

Q. Oh, well, now, you did know because Mr. Puter had told you.

A. Well, I knew he was representing C. A. Smith. He might have been representing John A. Willd. C.

(Testimony of Horace G. McKinley.)

A. Smith's name might have been coming up incidentally in the matter, and I didn't know but what John A. Willd was close to Smith, and Willd was representing Smith.

Q. You knew the lands were going to Smith?

A. I did not.

Q. You didn't know that?

A. No, sir.

Q. When did you learn that?

A. I don't know it to this day.

Q. You mean by that that you don't know positively and unequivocally?

A. I never followed the chain of title up at all. I don't know whether Smith owns the land now or not, or did then, or whether they was ever transferred to Smith.

Q. What is the reason you took a mortgage and deed on the same day?

A. Well, there was at the time of final proof, the same day, Mr. Puter told me that the lands would be deeded—be deeded to Mr. Willd; that Mr. Kribs was going to buy in that vicinity, and if any of the parties **[573—405]** that gave the mortgage didn't want to give the deed that that was their privilege; that we could not force them to do it; but if they wanted to clean the thing up, there, if they wanted to give a deed, why, they could do so. As far as the taking of the deed is concerned, I don't recollect very much about that. I was not particular myself whether Mr. Smith, or Mr. Puter sold the lands to Kribs, or Smith. I was interested in the location fee, of $100. If these parties didn't want to deed over

(Testimony of Horace G. McKinley.)

the land, why, that was their privilege not to; and I think I would just as soon preferred that they did not deed them over to them.

Q. When did you get your $100 location fee?

A. About that time or shortly after.

Q. Did Kribs pay you that money?

A. No, sir.

Q. Whom did he pay it to?

A. Paid it to Mr. Puter.

Q. Well, what did you do with the deeds immediately when you got them?

A. I gave them to Mr. Puter, those that I got. I don't recollect how many I got.

Q. And that were gotten?

A. And were gotten.

Q. And is this $3,300 all you got, you and Puter got? A. No, sir.

Q. What else did you get?

A. We got at the rate of $5.25 an acre.

Q. That is what you were getting right then and there, isn't it? **[574—406]** A. No, sir.

Q. From whoever was taking the land?

A. I didn't get mine out of that last part, I don't think, until quite awhile afterwards.

Q. Nobody else did until after patents were issued?

A. I cannot say as to that. I don't think it was that long, though. There might have been some part of it held out, but there was no such—I think after all the final proofs had been put in, and the transaction closed, I think then that Mr. Kribs paid Mr. Puter and Mr. Puter paid me.

(Testimony of Horace G. McKinley.)

Q. All you had coming?

A. With the exception of a small part that was held out pending the patents being issued.

Q. And you knew right then and there, when you took those deeds that that was the arrangement? You were not getting merely $100?

A. I knew, yes, when those deeds were given, I knew that the lands were sold.

Q. And you knew that on the 19th day, or the 18th day of April, whatever day it was, the first proofs were made?

A. The day of final proof. Yes, sir, I knew that those proofs that were made that day, at the time the deed was given that the land was to go to Mr. Willd, and that Mr. Kribs was acting as agent for Mr. Willd.

Q. And you didn't know who Willd represented?

A. Didn't know anything about Mr. Willd.

Q. And you knew then that you were going to get $5.25 an acre for them? A. Yes, sir. **[575—407]**

Q. And that you were going to get your money from those people, the people that were buying the land?

A. That is where the money would come from. I was doing my business with Mr. Puter.

Q. What was the function, then, of that mortgage there against the entryman himself, when you knew you were going to get your money from a man in Minneapolis?

A. That was the reason, when the mortgage was drawn up, for the purpose of allowing these parties, if any of them wished to go ahead and wait the three

(Testimony of Horace G. McKinley.)

months, and take it up, they had the privilege to do it.

Q. Yes, but when they gave the deed right then and there, what was the purpose?

A. To clean the thing up, if they wanted to deed it.

Q. Didn't you clean it up much nicer if you didn't take any mortgage, but took a deed without any mortgage?

A. That was not according to the arrangement I made with these parties. I made the arrangement with these parties that this mortgage should be taken; they should be allowed a certain time if they wished to sell to other people.

Q. You didn't allow them any time?

A. We didn't force them to take any deeds.

Q. They just came along and took the $75, and went away? A. That was up to them.

Q. Didn't have any controversy with any of them about it, did you?

A. I don't think we had any very warm arguments, no. There might have been one or two that refused to do so, and there was two or three that I recollect that did **[576—408]** refuse.

Q. Who were they?

A. Well, I don't—I can't recall the names, but there were not only one or two, but I think there were half a dozen.

Q. There was John L. Green, wasn't there?

A. I can't recall the names. I know that there was some of them that we took the mortgage and we didn't take the deed, for days afterwards. I think the Albany boys—I don't think we got their deeds—

(Testimony of Horace G. McKinley.)

we didn't get their deeds for four or five days afterwards.

Q. You paid them $75 though, at the depot that same evening?

A. Yes. And we paid them more money to get the deed later on.

Q. Held you up, some of them?

A. Not particularly.

Q. You got the deed in about two days later?

A. I don't know what time it was. I know they didn't give a deed the day they signed the mortgage. I know the Brownsville boys, none of those gave a deed.

Q. The Brownsville boys, all but the three that were married, did give deeds, at that very day at Roseburg. Don't you remember that?

A. The three that were married didn't.

Q. They had wives; you had to get their wives' signatures before you had the deal completed?

A. I say they were not compelled to. That was up to them if they wanted to.

Q. You understand the contract, whatever arrangement you **[577—409]** made, was not one that would bind anybody if they didn't want to be bound?

A. Well, yes. That was up to them. They could act as they pleased about it. They had the privilege to sell, or they had the privilege of holding. If they wanted to hold, why, we couldn't stop them.

Q. Now, then, there were 57 entries there, weren't there? A. Yes.

Q. And $400 was the purchase price of an entry where there was 160 acres? A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. Some of them there was 170 acres in?

A. Yes, sir.

Q. You didn't make any difference in your mortgage on those? A. No, sir.

Q. Some came from Portland here, and others came from Albany? A. Yes, sir.

Q. Some lived in Roseburg?

A. Yes, sir.

Q. Yet your mortgage was $600 always?

A. Yes, sir.

Q. Well, now, the Land Office fees were about $10.65, weren't they?

A. I don't know what they were.

Q. And you paid Mealey $10 on each claim?

A. Yes, sir.

Q. For showing it to you? A. Yes.

Q. You paid him $100 for cutting trail?

A. Yes.

Q. That would be about $2 a claim?

A. Yes.

Q. And the expenses of the entrymen from Salem, say, **[578—410]** to Roseburg, two trips, the total expenses run somewhere around $30, wouldn't it?

A. I don't know.

Q. What? A. I don't know.

Q. About $8 fare from Salem to Roseburg, isn't it?

A. Well, I suppose that is what you would have to pay.

Q. Well, what did you pay, then?

A. I got rates.

Q. What is that? A. I got some rates.

(Testimony of Horace G. McKinley.)

Q. What were your rates? A. About half.

Q. One and one-third, wasn't it?

A. I don't know just what it was. I know I got special rates there.

Q. You got excursion rates?

A. Excursion rates.

Q. Which are usually one and one-third?

A. About that. It might have been one and a third. It might have been one-half.

Q. Did you arrange it with the conductor on the train instead of buying the tickets?

A. No, sir.

Q. You bought the tickets? A. Yes, sir.

Q. And you paid each of the entrymen $75?

A. Some $75. I guess some of them got $100—one or two or three.

Q. You paid $7.50 for publication?

A. Yes, sir.

Q. And some expense of taking an entryman to that land? A. Yes, sir. **[579—411]**

Q. What did it cost to take an entryman out to that land on an average?

A. Well, I don't know. I would have to figure on that.

Q. What?

A. I would have to get down and figure on that myself.

Q. Cost pretty near $10, wouldn't it, on an average? All those entrymen? You had to take them the closest was Albany, or Brownsville.

A. Yes, sir, Brownsville was the closest. The furthest was Roseburg.

(Testimony of Horace G. McKinley.)

Q. They would average $10 easily, wouldn't they —more than that? A. To all of them?

Q. Yes.

A. I don't think they would average that much. There were some—Mrs. Beeman here, she stated that she had been on that land.

Q. And Wilson—you never took him out there?

A. No. There possibly was one or two others—some others. I don't know whether there was or not.

Q. Well, say it would average $7.50 then.

A. Well, that will allow it.

Q. And your publication fee was $7.50 more on each entry. That would run the entry up to something like $540, wouldn't it?

A. How much?

Q. About $540—$530 or $540 to $550?

A. Well, you have got the figures there.

Q. How is that? **[580—412]**

A. I say you have the figures there. I don't know whether they are right or not. I wouldn't say as to that. I might figure that down $20 or $30. When Mr. Puter and I started in on this, we had the thing figured up that it wouldn't run up to any such sum as that. We hadn't figured at the time of filing anything about the trail, anything about making these three or four trips to Roseburg; and when we started in, with most of the parties, the agreement I had was that the location fee should be in the neighborhood of $100. If it ran less, than that, we had to pay out the expenses more, as Mr. Puter stated in one of his letters, he thought I could get all the parties from Roseburg, or most of them, and in that

(Testimony of Horace G. McKinley.)

event there wouldn't be any railroad fare up, and he seemed to be disappointed, as the letters show there, that I had to go to outside places. But the way we figured at the time when we first concluded to go into the proposition, was that we would get a location fee of from $75 to $100 out of it.

Q. But you said you took that mortgage right there on that last day just to get you that location fee. A. Yes, sir. Yes, sir.

Q. Well, now, that would give you $3,300, if you had gotten $100 on each one?

A. That is what it would, yes, sir.

Q. But you didn't get that much, did you? Some of them you only got $75 out of? A. Yes, sir.

Q. Now, then, you had been out $600 for relinquishments, hadn't you? **[581—413]**

A. I don't know what the sum was. It would be about, let's see—there were 24—some of the parties. there was a few of them were not paid anything, you know. Meyers and wife, I don't think they got anything out of it. Whether we paid $25—we might have paid $10 to some. We might have paid fifteen.

Q. Well, some of them you paid $50?

A. Well, I don't recollect just those figures.

Q. Well, now, you had paid out, say, $600 for relinquishments, $500 to Mealey, $375 for publication, and $375 for relinquishments; you had paid $10.65 apiece, a little more, for 33 entries, fees, making $350 approximately, and it cost you say $7.50 to take the people to the land that you did take, anyhow $300. It had cost you, say, $15, well, say $20 to take each entryman to Roseburg twice pay all his ex-

(Testimony of Horace G McKinley.)

penses, and you took the whole 57 there twice.

A. No, sir.

Q. How many did you lack in taking them there twice?

A. Well, when we had this controversy with the Northern Pacific there, why, those parties did not go down,—I don't know but very few of them did—possibly three or four; but the rest there was no necessity of them going down. We went back and got their relinquishments at Salem, here, and different places.

Q. And some of them you took three times—cost anyhow $600 to take those men to Roseburg. You had been there at least seven times yourself?

A. Yes.

Q. And it cost you at least $25 to make the round trip? **[582—414]** A. I don't know as it did.

Q. What?

A. It might and it might not. Why would it cost me $25?

Q. What? A. How would it cost me $25?

Q. Well, you were living pretty well at that time.

A. Well, you can't charge all that up against the land. I had other deals on hand then, that is, a few of them, that might take me down there.

Q. You took Dan down there at least four times?

A. Yes.

Q. That is, say $20 a trip, round trip.

A. All right.

Q. Now, we will see how much money you would have out of your $3,300. That would be $3,320, without paying Bas. or Dan anything, without paying

your attorney that represented the Northern Pacific Railroad Company down there. A. Yes.

Q. You were losing quite a lot of money on the deal? A. Yes, sir.

Q. Still you took those mortgages there in order to secure you that location fee.

A. Yes, that is what I did.

Q. And that is all you were looking for at the time?

A. At the time of filing, yes, sir. We had no idea those expenses were going to run up to $3,320. There was a whole lot of expense in there that we never figured **[583—415]** on at all. We figured on clearing at least $5,000 when we went into it.

Q. $5,000? A. Yes, sir.

Q. How were you going to clear that $5,000?

A. On 57 quarter sections.

Q. That would be $5,700? You had agreed to pay Mealey $400 to begin with.

A. Well, all right.

Q. You knew how much it would cost to take an entryman to the land, didn't you? A. Yes.

Q. There would be $570 there?

A. Yes, sir.

Q. You knew there was $10 and a little over expense at the Land Office. There is $570 more?

A. Yes. We figured on the expenses being possibly $400 to $435—around there—which ordinarily it would be.

Q. $430 at the Land Office? A. Yes.

Q. Let alone taking a man to the land, and publishing his notice, $7.50 for notice too.

(Testimony of Horace G. McKinley.)

A. Yes.

Q. Made another $400? A. Yes.

Q. So you couldn't have ever figured on any $5,700.

A. Yes. Well, now, wait. You are going too fast in your figuring. Some of these people at the time we only agreed to pay them $50; that is, advance them $50, at the time of final proof. I can sit down and figure where I can take a claim up in any part of that country there for $435. **[584—416]**

Q. What difference would the amount you were going to advance make upon your location fee?

A. Make all the difference in the world.

Q. If you were going to borrow the money from somebody else, and were not going to put it up?

A. Well, we might be able to borrow $600 where we could not borrow $800.

Q. You never told the entrymen you were going to borrow $600, or keep any part of it, except your location fee. If you only advanced the entrymen $50 apiece, then your mortgage would be reduced by $50, because you were only going to take your actual expenses there? That is what you told the entrymen, wasn't it?

A. No. If we gave the entrymen $50, we would get a location fee of $125.

Q. You never told the entrymen anything about $600?

A. Yes, I did. I told a great many entrymen about that $600 mortgage.

Q. When? About the time they signed it?

A. No, sir. No, sir, at the time when I first

(Testimony of Horace G. McKinley.)
entered into an arrangement with them. I won't say that I did all.

Q. What were you going to give them $75 for?

A. Advance them that much for their time and expenses that they might have been out a little bit, outside what I was out.

Q. What advantage were they going to get out of the transaction?

A. They would be sure of getting $75.

Q. They were going to get $75?

A. Yes, sir. **[585—417]**

Q. The land was no inducement to them?

A. I don't know.

Q. You used the $75 as an inducement?

A. Yes, sir.

Q. You told them they would get that at the time of final proof? A. Yes, sir. Yes, sir.

Q. Now, the purpose of putting that mortgage at 90 days was to get the land quick, wasn't it?

A. Well, 90 days is a long time.

Q. For a mortgage?

A. Why, certainly. I can sell a lot of land in 90 days.

Q. Of course you can. That is what you wanted it for, so you could turn the title quick.

A. Yes, sir.

Q. You wanted the title available?

A. We didn't want a mortgage to run six years. I will admit that.

Q. If you were only looking for the location fee, what did you care about the time the mortgage ran?

A. This location fee—I was looking at the propo-

(Testimony of Horace G. McKinley.)

sition different at the time these parties filed and at the day they proved up. Now, you have got there —there is $3,320. That allows $20 off the deal closed right there, and they took this $600 mortgage and went and sold to somebody else. They would pay us back this $600—we would be at a loss. When we saw we were coming out, and all this expense was being charged up against us, and we would lose $20 —of course, we didn't know just how much—then it came into our mind we better sell, if we could get more for the land, **[586—418]** in order to make that up.

Q. Puter was talking sell from the very day he struck the train at Portland.

A. If he was, I was not talking sell. You will have to get that from Mr. Puter. I was talking sell along toward the last, round there, and up to one week before the land was sold, I was talking sell then to people in the east, and for more than $5.00 an acre.

Q. You gave Puter a lot of letters of introduction to people in the east as he left here, didn't you?

A. Yes, sir.

Q. To people that he would approach, who were timber men?

A. Yes, sir, approach as to getting money, to furnish the money for final proof, yes, sir.

Q. And you approached timber dealers, men who were dealing in timber.

A. Yes, on the proposition.

Q. Men who were not money lenders, but they were timber buyers.

(Testimony of Horace G. McKinley.)

A. And money loaners also.

Q. Who were money loaners?

A. R. J. Shields of West Superior was one money loaner, and timber buyer, that was approached on the matter—vice-president of the bank there.

Q. Where did he loan money?

A. On timber lands generally.

Q. Where? A. Wisconsin.

Q. Never loaned any in Oregon?

A. Not to my knowledge. **[587—419]**

Q. Did he ever buy any in Oregon?

A. Not to my knowledge, no, sir. But the proposition was put up to him as a straight loan.

Q. Of the money? A. Yes, sir.

Q. Now, then, do you want this court to understand that that mortgage that you took upon that day that you took a deed, was to secure your location fee? That was one purpose of it?

A. That was one of the purposes, yes, sir. There were other purposes.

Q. What were the other purposes?

A. To allow these parties to sell to whoever they pleased.

Q. How could you allow them to sell if you took a deed simultaneously with the mortgage?

A. That was up to them. If they wanted to go out all right; if they didn't want to go out, all right.

Q. But they gave it?

A. In most cases. Some cases they did not. Some of them wanted to sell. Some of them looked for a buyer afterwards.

Q. There was along about ten out of the whole

(Testimony of Horace G. McKinley.)

bunch that didn't give a deed the very day they gave the mortgage?

A. The rest wanted to clean it up then, I suppose, if they thought anything about it.

Q. Why didn't you take a deed and clean it up? Why did you take a mortgage?

A. That was agreed, the mortgage. I wanted to give them an opportunity.

Q. But you didn't give them any opportunity? **[588—420]**

A. I did give them an opportunity.

Q. You says here now we will take a mortgage, here is a deed? A. Yes.

Q. Handed them both out. What opportunity did the man have?

A. If a man thought anything about it, if he wanted to find another buyer, he knew a deed from a mortgage.

Q. You had him there. When the man said: "I will sign a deed," why did you have him sign a mortgage too? A. Did he have to sign a deed?

Q. Yes, but he says to you, "I will sign a deed."

A. That is up to him.

Q. Why did you have him sign a mortgage, then?

A. Suppose he says, "I won't sign a deed."

Q. He didn't say it.

A. I don't know why he didn't. He had an opportunity.

Q. What was the use of your cumbering the record, and cumbering your affairs with a mortgage that had no effect, that a man had given a deed simultaneously with it, both made on the same date,

(Testimony of Horace G. McKinley.)
at the same time, in the same transaction?

A. Well, the arrangement was made that he should do that.

Q. Yes, I know, but why, for instance, you had one of these fellows—take any of them, for instance?

A. Yes.

Q. You had him down there in that room, somewhere there in the Land Office? A. Yes.

Q. And you have got a mortgage and a deed all ready for him? A. Yes. **[589—421]**

Q. And you say, "Here is a mortgage and here is a deed. Do you want to sign the deed"? He says, yes. Well, why didn't you throw the mortgage into the waste basket and have him sign the deed? Why did you have him sign both?

A. That could have been done.

Q. You didn't do it?

A. Maybe I haven't got a reason why we didn't do it. It could have been done. I don't know why we didn't do it.

Q. Wasn't the purpose to put a mortgage on the record and make it appear that the man who was putting up the money, paying the money over there at the Land Office, was loaning the money instead of buying the land?

A. I don't know as that was the purpose of it. We had the mortgages all made out, and our plan was to have them mortgage that land. That was right, yes. Those that wanted to sell that same time after they mortgaged the land, the deed was right there for them to sign. If they made objection against signing the deed, why, we could not force

(Testimony of Horace G. McKinley.)

them to sign it at all.

Q. But you took a mortgage in each and every case, and placed it on record, didn't you?

A. Well, that is just the arrangement we had.

Q. It was a likely method of concealing the real transaction, wasn't it, that the man had deeded immediately upon conveying the land.

A. I don't think we figured on concealing the transaction, Mr. McCourt. I don't think we gave it any thought about concealing it. We thought it was a legitimate proposition. I don't know why we would want to conceal it. **[590—422]** But why I would think there was given a mortgage, they just gave it—that was all. They signed the deed there, but they had an opportunity of refusing to sign the the deed, and going ahead and finding another buyer if they could.

Q. Every man that you approached, you told him there would be $75 in it? A. Yes. That is—

Q. Then, when you approached a sufficient number to satisfy you, in that way, and who had agreed to it, you took them to Roseburg? You told them when to go to Roseburg, didn't you?

A. Yes, sir.

Q. And you took them and paid their fare?

A. Me, and that is—

Q. And you placed them in a hotel at your direction when you got to Roseburg?

A. Yes, sir.

Q. And you piloted them to the Land Office and had them file? A. Yes, sir.

Q. And you paid their hotel bill and brought

(Testimony of Horace G. McKinley.)

them back? A. Yes.

Q. Most of them you took to the land, either on that same trip or at another trip? A. Yes.

Q. Paying all expenses and looking after them yourself? A. Yes, sir.

Q. Or having Dan Tarpley or Bas Wagner do it?

A. Yes, sir.

Q. Paid their expenses back to their residence?

A. Yes. **[591—423]**

Q. Had the notice published? A. Yes.

Q. Charged to you and paid by you?

A. Yes, sir.

Q. Then later you went around and told them it was time to make proof? A. Yes, sir.

Q. Told them to be ready and where to be ready?

A. Yes, sir.

Q. Placed them on the train and paid the fare?

A. Yes, sir.

Q. Sent them again to the hotel with which you had an arrangement? A. Yes, sir.

Q. To take care of parties brought there by you?

A. Yes, sir.

Q. At your expense? A. Yes, sir.

Q. Then you made the proof? A. Yes.

Q. Eliminating for a moment the contest and the trouble that you had between times?

A. Yes, sir.

Q. As soon as they had proved up they got that same $75 you had promised them in the beginning?

A. Yes, sir.

Q. You took a mortgage and a deed?

A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. From all except a few of the married persons whose wives were not there?

A. Well, they were not all married persons.

Q. Well, there was a couple up there at Albany, who were not married, whose deeds you got later, two or three, probably?

A. Well, I don't know; there might have been some others. **[592—424]**

Q. Well, now, you didn't have a thing to do with those entrymen after that moment until the trouble came up where Stratford appeared as a Government agent? A. No, sir.

Q. When did you first meet C. A. Smith?

A. I cannot give the exact date. Some time in the year 1900.

Q. Did you see him there on May 20th, when he was at Albany or Roseburg—Albany?

A. No, sir. The first time I saw him was after July, 1900.

Q. Where did you meet him?

A. I think I met him in California, or on the boat going from San Francisco to Eureka; but I wouldn't be positive. It was some time, I remember meeting him late in the summer.

Q. Were you interested in that redwood deal between Puter and him there in Humboldt County?

A. No, sir, not at all.

Q. Representing Puter in it in any way?

A. No, sir.

Q. Aiding Puter in it? A. No, sir.

Q. Did you go on the boat from San Francisco to Eureka with Smith?

(Testimony of Horace G. McKinley.)

A. Merely on a little pleasure trip with Mr. Puter.

Q. And who besides Smith were in the party and yourself and Puter?

A. Well, I couldn't say. I would have to go back a little. I would not say that Smith was on that boat. But it is the best of my recollection that I either met him in **[593—425]** San Francisco or on the boat. But if it was on the boat my talk was just: "How do you do, Mr. Smith," and introduced to him. But I have no recollection of even talking to him.

Q. Did you ever visit that timber out in 14–2, 3 and 4 with him? A. No, sir.

Q. Since that time, or at any time?

A. No, sir. Never met him but twice in my life.

Q. You were not at Albany on May 20th when he came there?

A. No, sir. If I was, I didn't see him.

Q. Now then, the transactions occurring between Smith and Kribs with relation to the purchase of these timber lands was conducted by Puter, was it not, in behalf of you and Puter?

A. Well, the purchase of the lands by Kribs and Willd. I don't know anything about Smith purchasing the lands.

Q. Oh, yes, you are injecting Willd in there. You never knew Willd.

A. I don't know Smith. As I say, I don't know whether Smith ever purchased the lands or not. I have heard that Kribs was acting as Smith's agent. But, as far as Smith getting in and doing any pur-

(Testimony of Horace G. McKinley.)

chasing from Puter, I don't know.

Q. You knew that you and Puter, and had understood Smith was the man that was buying the lands, and you always talked Smith between you as to those lands?

A. I don't know as we did. We talked Kribs between us. Puter had dealings with Smith, I guess, all right enough, but I did not. **[594—426]**

Q. You knew that the same interests that were furnishing the money to make final payments were furnishing the money to purchase the land?

A. At what time?

Q. At the very time the deeds and mortgages were made. A. Yes, indeed I did.

Q. Did you understand why they were taking the mortgage to one man and the deed to another in the same interest, the same parties being interested all the while?

A. I got my directions from Mr. Puter as to that.

Q. He told you that was the way they wanted it done?

A. He said any deeds that should be taken should go to Mr. Willd, yes, sir.

Q. He didn't explain to you why?

A. No, sir.

Q. And you didn't stop to inquire why?

A. I might have at the time, but I don't recollect. I was kind of following along his directions there—instructions.

Q. Will you refer to your diary there, and see where you were from May 14th to May 31st.

A. I haven't any note here on May 14th. I have

(Testimony of Horace G. McKinley.)

the 15th, from then on.

Q. All right.

A. The 15th I went to Roseburg on the night train. The 16th proved up on 14 claims; left at night for Albany; on the 17th, stopped off at Albany for deeds; came to Salem in the afternoon; the 18th came to Portland in the afternoon; the 19th in Portland; the 20th in Portland; and I know from what is mentioned here, at the 20th, that I was here the 21st. **[595—427]**

Q. In Portland? A. Yes, sir.

Q. Where were you on the 22d?

A. Well, I have three or four days here I have no notes on at all.

Q. You had taken a little flyer about that time?

A. I might have been.

Q. And that computation I was making there, the expense of Puter's trips east, was not taken into consideration was it?

A. No; but Mr. Puter had other matters to attend to there in the east also. He could not charge that entirely up to the land, if he was doing that.

Q. No, but some of it should have been charged to the land?

A. Well, possibly, yes. He was selling some other lands for me at that time, and was making special trips east to sell lands for me.

Q. You and Puter had other land transactions at that time?

A. We had one other land transaction on hand at that time, yes, sir.

(Testimony of Horace G. McKinley.)

Q. You and he had been dealing quite extensively prior to that time in school lands in Oregon?

A. School lands and Government lands, yes, sir.

[596—428]

Q. You usually kept on hand a large batch of applications or certificates—school certificates?

A. Yes, sir.

Q. Subject to assignment by endorsement?

A. Yes, sir.

Q. Under seal? A. Yes, sir.

Q. I hand you a letter dated November 6, 1901, written from Minneapolis, Minnesota, and ask you in whose handwriting it is. A. Mr. Puter's.

Q. Was that letter received by you from him in due course of mail? A. Yes, sir.

Marked "U. S. Exhibit 110 for Identification."

Q. I hand you a letter dated February 15th, Milwaukee, Wisconsin, February 15, 1902. Was that written to you by Mr. Puter? A. Yes.

Q. And received by you in due course of mail?

A. Yes, sir.

Marked "U. S. Exhibit 111 for Identification."

Q. I also hand you a letter dated March 1, 1902, and ask you if you received that from Mr. Puter in due course of mail? A. Yes, sir.

Marked "U. S. Exhibit 112 for Identification."

Q. I also hand you a letter dated November 7, 1901, and ask you if you received that in due course of mail from Mr. Puter,—Minneapolis, Minnesota, November 7, 1901? A. Yes.

Mr. LIND.—11—7; what does that mean?

(Testimony of Horace G. McKinley.)

A. November 7th. **[597—429]**

Mr. McCOURT.—November 7th. Mr. McKinley is an expert on 11—7 if you want to know.

Marked "U. S. Exhibit 113 for Identification."

Cross-examination.

(Questions by Mr. LIND.)

You just identified those letters?

Mr. McCOURT.—Yes, I just identified them. I want them there so when I call some other witness I can call his attention to them.

Q. Prior to the time that you entered into this arrangement, of which you testified, with Mr. Puter, what had been your business, Mr. McKinley?

A. Dealing in timber lands, buying and selling, locating parties on timber lands.

Q. What do you mean by locating parties on timber land?

A. Furnishing the data, such as the description, taking parties up on the land. For instance, a man wants to take up a quarter section of timber land from the Government or any other kind of land, go and show him the corners, go over the timber, charging him a fee for it—the information.

Q. Is a man engaged in that kind of business—they usually are called locators, are they?

A. Yes, sir.

Q. Is it the custom that the locator looks after all the business of the entrymen pertaining to the making and perfection of the entry?

A. That—in some cases, yes. That depends a good deal on circumstances.

(Testimony of Horace G. McKinley.)

Q. What was your custom in that regard?

Mr. McCOURT.—I object to his custom being shown

COURT.—I suppose counsel wants to show the general **[598—430]** practice of Mr. McKinley as it may bear on his actions in this case.

A. What was that question again, there, please?

Q. (Read.)

A. Well, I would generally take the parties on the lands in most cases, make arrangements with the newspapers, their filing—or their advertising notices, perhaps accompany him to Roseburg, help make out their papers there, both at filing and final proof perhaps. In other cases I would merely give them the numbers maybe, and they would go up and look at the land themselves; or I might have an agent or a helper who would show them on the land.

Q. Now, who conducted the business with the entrymen in the cases involved in this action—you or Mr. Puter? I mean prior to final proof?

A. Mr. Tarpley and myself did in nearly all cases. I think there were four cases that Mr. Puter—that is, at the time of filing.

Q. What four cases were those?

A. Mr. and Mrs. S. A. D. Puter, Mrs. Jacobs and her daughter, Elmira Jacobs.

Q. All the rest were conducted by you?

A. Yes, sir.

Q. And with your—and Mr. Tarpley?

A. Yes, sir.

Q. What about the Beeman claim?

(Testimony of Horace G. McKinley.)

A. I attended to that.

Q. With whom did you make your arrangements in that instance? A. Mr. Beeman.

Q. Wholly? A. Yes, sir.

Q. Who was Mr. Beeman?

A. Well, he told me at the time that he had located himself some few— **[599—431]**

Q. I say, who was he? He was supposed to be the husband of the witness Beeman?

A. Yes, sir; yes, sir.

Q. You may state—you may state what you stated to Mr. Beeman with regard to the compensation you would give him if he found entrymen who were willing to be located by you?

A. Mr. Beeman first wrote me a letter at the Revere House, with a one cent stamp on it, I think. I think he was in the city at the time. He called to see me, but I was out, and he wrote a letter saying he wished to see me. Well, I met him and he told me he was familiar with the country up there, and also Mrs. Beeman, through that; she had been up there on different occasions. And this was some time after I had taken parties from Albany to Roseburg or from Salem to Roseburg, I don't remember which. But he asked me what the arrangement was and if his wife could get in and take up a claim under that arrangement, and I told him yes, that his wife could, and explained to him about the arrangement, the same as the other. And I further told him that any one he got, why, that I would pay him $5.00 for each person that he secured.

(Testimony of Horace G. McKinley.)

Q. Did you ever say to anyone that you would pay a larger sum that $5.00 for introducing you to the prospective entrymen? A. I did not.

Q. In bringing a prospective entryman to you?

A. I did not.

Q. Did you ever pay any more to anyone?

A. I don't remember of even paying that to anyone, but I think in one or two instances that I did say—that I would pay them; and I might have in one or two instances paid it. **[600—432]** I think down at Roseburg one of the boys there went and secured a fellow there and I did pay him $5.00 extra, but I don't recollect who.

Q. Now, what was the actual arrangement between you and the entrymen who filed on those claims? What was the talk, the understanding between you? Give the Court in your own language just exactly what you said to the entrymen and—

A. Well, that—that talk varied a little in cases. Now, there would be like in the case of Mr. Wilson there—I had known him a long time and if I should happen to be a little rushed—if I happened to be at the time—

Q. Why were you in a rush at all?

A. I had other business on hands of a different nature, and I was in a hurry on account of those Northern Pacific people being up in there and I knew this was a rush matter. A delay *or* a day or two might mean that it would knock us out, perhaps, of this proposition, and for that reason, why, I was con-

siderably rushed all the way along at the time of the entry.

Q. What did you say to Mr. Wilson, for instance?

A. Well, I suppose according—I heard his testimony on the stand here, and I think he is right—I might have said, "You go on down and use your timber right," and he would go. I would say, "I have a piece of timber here. You go down and file on it and you can make some money on it. I will act as your agent in the matter and help you all I can and you will get $75 anyway," and let it go at that and say nothing further about it. There might have been that arrangement made with two or three other parties that I knew well, and I would not go into the details. There were other cases where I would explain about this mortgage. **[601—433]**

Q. What was your plan that you had outlined in your own mind that you were working on in the location of these entrymen and for the purpose of acquiring this land?

A. Until the time when this first— when we first went into the proposition and made the arrangement with Mr. Puter, which we talked over thoroughly here that night that I came down to see him, and went into the question of expenses, about what it would cost, what we could make out of it, and the location of the timber as to our being able to handle it later on and rehandle it, we did discuss that. I remember that. I say, we went into it merely for the location fee. We had this in view later on in life sometime, five years later, maybe, we could re-

(Testimony of Horace G. McKinley.)

handle the same and make some money, but at that particular time when we was talking of it then we was to put up this purchase money ourselves there—they thought we were—we would file these people on the land, agree to advance them $75, put in $100 location fee—from $75 to $100 as we figured it out—$425 or $435, I think it would cost to obtain title to the land from the Government, and sum it up all around it would be about $600, so we called it $600 and Mr. Puter himself told me to go and see these parties and get them under that arrangement; and acting along these lines I did that and told a great many of the entrymen that we would take a mortgage for $600; but in no instance—they can't say so nor no one else—was ever anything said at the time of entry that they should deed the lands over to me or sell them to me or anyone else.

Q. As a matter of fact, Mr. McKinley, you expected that these lands would be for sale and that you could handle them after proof and patent, didn't you? Did you or didn't you? **[602—434]**

A. Knew they would be for sale, but as for myself handling them that was merely chance. I might be able and some other man might step in at the right moment—

Q. Didn't you know, I want you to be perfectly frank and candid with the Court—didn't you expect, by reason of the arrangement, that you would probably have the handling and the selling of these lands and the profit there was in them?

A. Yes, yes, I can say I did. I can say I did.

(Testimony of Horace G. McKinley.)

Q. Didn't you really feel that, notwithstanding there was no talk about a sale or anything of that kind—notwithstanding that fact, in the natural course of events, this title would be disposed of by you eventually?

A. Yes, I did. I understood that for several good reasons.

Q. Well, what—

A. These men were—I was acquainted with them, knew the locality of timber, knew who owned the timber on the north, east and the south, I had sold myself hundreds of thousands of acres—two whole townships south of those, tracts to my people back east, and I thought I would have the first chance. They would naturally give me, as I went ahead and allowed them to make some money out of it, if I would be fair with them all the way through, they would naturally give me the first, the preference right, if the lands were for sale; that when they came to talk sale they would give me the preference right in place of some outsider, to handle the lands, and if they did I thought I was in position, buying and selling at that time and dealing quite largely—that I could find a buyer either with my people in La Crosse, Wisconsin, or anyone outside.

Q. When did it first become a matter of discussion between you and Puter to take the deeds at the time of proof, or as **[603—435]** soon as you could get the deeds—as soon as they could be obtained?

A. On the day of proof. The day when the

(Testimony of Horace G McKinley.)

parties—the first parties proved up.

Q. Puter met you? A. Yes, sir.

Q. Which way did he come from when he met you at Roseburg at the time of final proof? Had you seen him previous to meeting him at Roseburg, or did you just meet him at Roseburg?

A. I don't recall as to that.

Q. Can you tell by reference to your memorandum?

A. You mean, did we go to Roseburg together?

Q. Yes.

A. Or did we come from opposite directions?

Q. Or did he come up from California? He was in California a great deal at that time, was he not?

A. Yes.

Q. Or rather, away from Portland?

A. Yes, he was away from town, east and California, around.

Q. What I want to get at, is whether you had had any conference or understanding with Mr. Puter prior to April 16th with regard to the method of proving up and handling these claims, except such as you had in the first instance?

A. Nothing definite at all. We might have had in an indefinite way—might have talked this over.

Q. Talked what over? Give us your best recollection.

A. As regards deeding this land, possibly to Mr. Kribs afterwards; but there was nothing definite arrived at at all.

Q. When did Mr. Puter—when did Mr. Puter tell

(Testimony of Horace G. McKinley.)

you that Mr. Kribs, if you recall, was willing to take in his own **[604—436]** behalf, or in the behalf of some one, that land at a certain figure?

A. Well, to the very best of my recollection it was the day of final proof.

Q. Had you ever heard of Kribs? When did you first hear the name of Kribs spoken so far as you know, or when was it first suggested?

A. In the letters as read here yesterday where mention was made of Mr. Kribs.

Q. You never heard of Kribs prior to that time?

A. Never heard of Smith or Kribs, no, sir—C. A. Smith.

Q. You never heard of C. A. Smith prior to that time?

A. No, I didn't hear of him even at that time.

Q. Do you recollect approximately, when you first heard of C. A. Smith?

A. Well, I say I didn't hear of him. I didn't—I will have to correct that, because I heard of Smith as it states in those letters. I don't know whether the letter is at the same time, but it wasn't previous I am sure.

Q. That is the first—

A. That is the first I had—was through Mr. Puter as mentioned in those letters.

Q. In a letter of March 8th from Puter to yourself, there was this language: "In case that man Goddard is there, why don't you take him out on 14-2 and 3." What did you understand that to mean?

A. That anyone I could take out and show that

(Testimony of Horace G. McKinley.)

land and make a bargain with as to furnishing the money for final proof, that I should do so. That was my understanding with Puter all the time and I was working independent of him to find someone who would do that.

Q. Did you know this man Goddard? [605—437]

A. Yes, sir.

Q. Or know of him? A. Yes, sir.

Q. Who is he and where was he from?

A. A capitalist from La Crosse, Wisconsin, and a large owner of timber land in this country.

Q. Then in a later letter, Mr. Puter suggests to you that Ike Stevenson might come up from Portland to look at these lands? A. Yes, sir.

Q. In a letter in evidence dated Sunday, February 18, 1900, there is this language. "I only seen one man there and told him all about it and to say nothing, for he is a man that understands all about the business and has lots of money. His name is I. S. Stevens, of Saginaw, Michigan, and he is in Portland now. I have known him a long time. I was to take him on the land and if it was all right Stevens was to handle the business, when it came to proving up." Did you know anything about this man? Did you have any correspondence with this man Stevens? A. No, sir.

Q. Was that with reference to these lands in suit?

A. Yes, sir.

Q. "So that man Huntington went right to my man back there and offered him the same land at

(Testimony of Horace G. McKinley.)

$5.00 per acre; I have been holding it at $7.50." Does that refer to these same claims that had been filed on?

A. I think it does, yes, sir.

Q. Then it says: "My man's name is McClure of Duluth." Is that another man that Mr Puter looked on as a possible customer for these lands?

A. Yes, sir. **[606—438]**

Q. When proved up on? A. Yes, sir.

Q. Do you know about him—McClure?

A. I don't know the man any more than just through the correspondence. Know nothing about it only through the correspondence as outlined in the letter there.

Q. Did you—what other parties, if any, did you look to to get the money for proving up on these claims?

A. N. H. Withee of La Crosse, Wisconsin.

Q. When Puter went East on one of these trips did you write a letter of introduction to Puter—to Withee? A. Yes, sir.

Q. Did Withee consider it—consider the furnishing of the money for proving up on these claims?

A. Yes, sir.

Q. And finally wired you from New York, as indicated in the correspondence, that he would not furnish the money? A. Yes, sir.

Q. What others, if any?

A. Mr. E. L. Hanton.

Q. Who was he?

A. He was a—at that time he was dealing in tim-

(Testimony of Horace G. McKinley.)

ber and iron lands at Superior, West Superior, Wisconsin.

Q. Did you write him yourself?

A. Several letters. I had quite a lot of correspondence.

Q. During that period did you correspond with him with a view of interesting him to furnish the money to make the proof in this case?

A. January, February, March and April.

Q. As late as April?

A. Yes, sir. Now wait—pardon me a moment. The correspondence I had with him in April was nothing definite. I wrote **[607—439]** him that the proposition in a way was still open, but it was under advisement by different parties, or other parties, as to furnishing the money, but that the lands—later on I would take the matter up as regards selling them to him.

Mr. McCOURT.—I move to strike that out as not the best evidence of that correspondence.

Q. Have you the letters or a copy of them?

A. I have some of his letters.

Q. Have you a copy of your letters to him?

A. My letter to him?

Q. Yes.

A. I haven't it with me. I don't know whether I have a copy or not. All I have is a statement from him and that is merely a copy of it, but I haven't a copy of the correspondence, no, sir.

Mr. LIND.—Of course, it is within the discretion of the Court. The reason I asked was to develop the state of the mind of this witness at the time.

(Testimony of Horace G. McKinley.)

COURT.—I see the purpose of the examination, but of course the contents of the letter is not competent.

Q. Now, at the time of the arrest referred to in your testimony of yesterday, before whom were you examined?

A. The United States Commissioner at Albany.

Q. What was his name? A. Montanye.

Q. How long did that examination last?

A. About two hours, I think—possibly less.

Q. Were you sworn as a witness?

A. I don't think so, no, sir.

Q. Were others sworn?

A. I think there were one or two witnesses sworn.

Q. What was the result of the examination?

A. The case was dismissed against me.

Q. And you were discharged?

A. Yes, sir. **[608—440]**

Q. What was the date of that hearing, if you recall—about April—

A. I can't fix the date. I have omitted it in my notes here. I can't recall.

Q. About April 1st—April 1st?

A. I was arrested the first day of April. I always remember that, because I thought it was a joke at the start, and I think—

Q. Now, how long did the hearings continue in the local Land Office at Roseburg in the contests instituted by the Northern Pacific Railroad Company or its agents against some of those entrymen?

A. I think there were two entrymen placed on the

(Testimony of Horace G. McKinley.)

stand. It continued about two days, if I recollect right.

Q. Was any final action taken by the officers of the Land Office upon the testimony so taken?

A. No, sir, the proceedings seemed to stop after they had placed a second man on the stand there, pending negotiations being considered by the Northern Pacific Railroad Company and other parties.

Q. Was there a Government agent, a special land agent present at the time of that hearing in the Land Office?

A. I don't remember any Special Agent; there might have been one there. It might have been a Special Agent conducted the hearing, but I can't recollect if there was. I remember the Northern Pacific had their men there, in full force.

Q. What other methods were there of acquiring public lands in the Roseburg district in this State at the time? I mean, land of the character of those in question, other than filings under the Timber and Stone Act?

Mr. McCOURT.—I object to that as calling for a question **[609—441]** of law or asking his opinion as to the law.

COURT.—Well, it has been assumed in your examination that there was a method of filing scrip.

A. Well, there were three other ways where land —at that time land of that character was being acquired from the Government. One was under the Pre-emption Law. I don't think that that was repealed at that time. One was the Homestead Law, and the other was by placing scrip on lands—both

(Testimony of Horace G. McKinley.)

Government and State scrip.

Q. State scrip on State lands, you mean?

A. No, we could use State scrip on Government lands.

Q. You mean by "State"—

A. Indemnity—indemnity State—school lands, yes, sir.

Q. Were you familiar with those methods of acquiring public land? A. Yes, sir.

Q. Had you made scrip locations prior to that time? A. Yes, sir.

Q. Only a few or a great many?

A. A great many, especially of State.

Q. Running into the thousand acres?

A. Thousand acres—yes, sir, many thousands of acres.

Q. At the time these lands were entered and proved up on, did you have scrip?

A. How do you m*aen* "have it"?

Q. Did you own scrip?

A. No, I didn't own any.

Q. Was scrip handled by dealers? Was it for sale?

A. Yes, sir, in large quantities—in any quantity.

Q. Here at Portland?

A. Portland—all over the northwest and in the east. **[610—442]**

Q. And at Albany—in the banks? Was it handled usually in the banks?

A. Generally through the banks, yes, sir; that is, Government scrip.

Q. I am talking now of Government scrip.

(Testimony of Horace G. McKinley.)

A. Yes.

Q. The Northern Pacific and the lieu land scrip?

A. Yes, sir.

Q. And the Santa Fe scrip? A. Yes, sir.

Q. Black Mountain, I think, was the name of one variety of scrip? A. I think so, yes.

Q. What was the market value of this scrip at that time, if you know?

A. Well, it generally varied—all that class of scrip. Of course there are several different kinds of scrip.

Q. Well, there are scrips located on unsurveyed lands? A. Yes.

Q. They command a higher price?

A. Not at that—I don't think at that time they did. I don't think at that time. There was a law that was repealed later on, but at that time most scrip would take unsurveyed lands; but I am not sure as to the dates of that. But the average market price of scrip that could be used on these particular lands at that time would be from $3 to $3.50 per acre. Just as the owner—

Q. Wasn't it sold at that time as cheaply as $2.75 in large quantities?

A. Not Government scrip, no, sir.

Q. What about State scrip?

A. State scrip was sold all the way from $1.50 up to $3.00 per acre. It generally come a little under Government scrip. **[611—443]**

Q. And that could have been used with a little more trouble on these same lands, could it not?

A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. Were those the prices during January, February, March, April and May, 1900?

A. Well, I—you are talking of State and Government as I have said here?

Q. Yes.

A. Yes, State scrip. Well, I was offered State scrip at $2.75. I remember that. The Government scrip I was offered at that time for $3.50—either $3.25 or $3.50, by Chicago people.

Q. Now, the acquisition of public lands by scrip locations was the most expeditious way of acquiring title from the Government, was it not?

A. Yes, sir.

Q. If you wanted to obtain absolute title quickly from the Government, that was the way, was it not?

A. Yes, sir.

Q. Did you, in any conversation that you ever had with Mr. Kribs prior to the final proof in these cases, state or intimate to him that there was anything irregular or fraudulent in regard to these entries involved in this suit?

A. No, sir, I did not.

Mr. McCOURT.—Up to when?

Mr. LIND.—Up to the time of final proof.

Q. If you did say anything, what did you say?

A. I didn't have any talk with him at all.

Q. On that subject? A. On that subject.

Redirect Examination.

Q. He knew of your arrest and of the contest for the proof before he put up any money on this thing?

[612—444]

A. Yes, sir.

(Testimony of Horace G. McKinley.)

Q. What say? A. Yes, sir.

Q. Now, you—he knew, he was there, and knew of the negotiations pending between you and the Northern Pacific people for a settlement of your controversy with them?

A. I don't know whether he was or not.

Q. He was right around there at the time, waiting to put up that money?

A. The chances are he knew of it. I don't know whether he was there or not.

Q. Now, you say you usually took the parties on the land? A. Yes, sir.

Q. And you located for a fee? A. Yes, sir.

Q. Where did you ever locate any for a fee?

A. Several parts of the State.

Q. Where?

A. 16 South, 7 West; 16 South, 2 West; 15 South, 2 West; 15 South, 1 and 2 East; 26 South, 13 West, Washington.

Q. Who ever paid you $100 or any other location fee?

A. I can mention a whole lot of them.

Q. Isn't it a fact all the land you ever located, practically all of them, that they were taken over after final proof by you or some people interested with you or who you were representing?

A. People I located?

Q. Yes.

A. No, sir. It is not such a fact.

Q. Isn't it a fact that the bulk of the land went to people who were represented by you?

A. I would say possibly three-fourths of them.

(Testimony of Horace G. McKinley.)

Q. Even five-sixths of them?

A. No, I have done a lot of locating in the 20 years I **[613—445]** have been here. I have located a great many people where I did not get the lands at all; merely for the straight fee in them.

Q. Name some of them?

A. Miss Rose Henderson, Cyrus Deuey.

Q. Where are they?

A. In Wisconsin. They came out here and I located them. One person in Portland here now.

Q. Who else?

A. Four or five from Eugene.

Q. Who? A. Guy Huff.

Q. Oh. A. Yes.

Q. Who else?

A. A girl by the name of Nellie Gilbert, E. K. Brown—I did not get their lands. I located them and got a fee for it.

Q. What name did you locate Nellie Gilbert under up there in 11—7?

Mr. LIND.—That, your Honor, is immaterial. I object as irrelevant and incompetent, if it tends to discredit the witness.

Mr. McCOURT.—I think when they put up that this witness is credible and was doing a legitimate business, I can show that he took Guy Huff under a different name, and had him locate half a dozen different claims and that Nellie Gilbert was located under the name of Nellie Backus and Brown under a different name, and Bas Wagner as Zenas K. Watson.

A. Because I was in one crooked deal would not

(Testimony of Horace G. McKinley.)

indicate I was never in any straight deal.

Mr. LIND.—I think this discussion is entirely irrelevant. We have never sought to bolster up nor to **[614—446]** tear down the reputation of this witness. We want to elicit the facts. I object to this as incompetent and irrelevant and manifestly improper.

COURT.—I don't think it is competent for the question now under consideration. You can ascertain whether he made a location for a fee.

Q. Well, your location of Nellie Brown in 11—7 there—you got the land and paid her an outright fee for that?

A. I don't refer to 11—7 at all.

Q. But that was after or about this time.

A. Yes, I would say—

Mr. LIND.—Incompetent and irrelevant. I also object as an apparent effort to impeach the Government's own witness on an immaterial matter.

COURT.—I understand that counsel is trying now to ask him what his business was. Whether he was in the business of locating people for a fee or for the purpose of acquiring title.

Mr. LIND.—He has admitted that he acquired the title in perhaps three-fourths of the instances.

Mr. McCOURT.—Now, he names a definite one and I want to show that the transaction he had with this party—that at the same time he got the land and probably did not pay any fee.

Q. Your location of Nellie Backus in 11—7, or Nellie Brown, rather—

A. Yes.

(Testimony of Horace G. McKinley.)

Q. That you did get the land on—you and Puter did, and you did pay them an outright price for it—

A. All right.

Q. —didn't you? A. Yes, sir.

Q. The same is true of Brown?

A. Yes, sir. **[615—447]**

Q. And that occurred just about the same time as the other transaction you spoke of—the locating them on a timber claim? A. Much later.

Mr. LIND.—Objected to as incompetent and irrelevant.

Objection overruled; exception saved.

Q. What is that? A. A little later.

Q. How much later?

A. Possibly one or two years.

Q. It was only two or three months after this transaction and controversy, in this case?

A. Well, I am not talking of Brown and Gilbert in this case at all.

Q. No, I understand it was only two or three months later than the locations made in this case.

A. That the 11—7 location was made?

Q. Yes.

A. I guess that is right.

Q. Yes.

A. I think those locations were made in 1901—a year after.

Q. 1900—August? A. 1900.

Q. Now, Guy Huff—where did you locate him?

A. 16 South, 7 West.

Q. And he paid you a location fee?

A. Yes, sir,—

(Testimony of Horace G. McKinley.)

Q. What was his business at that time?

A. Got it through him.

Q. What?

A. That is, he got—I don't know where he got it. I got a location fee out of the claim he was located on.

Q. Who did he take that claim for?

A. Mr. Hobson. I was paid a location fee. [616—448]

Q. By Mr. Hobson?

A. Yes, sir, he was financing Mr. Huff in the matter.

Q. Yes, as a matter of fact, you knew Guy Huff never was able to pay you a location fee himself?

A. I located him on the claim and I got my fee for locating him. You can assume what you please.

Q. Now, this scrip made by locating—school scrip—you and Puter were handling lots of that stuff at that time, weren't you? A. Yes, sir.

Q. How was that secured?

A. That was—you mean the inside part How would the party that we secured it from secure it, or how did we get it? We would get it from people that dealt in that. There was a sort of ring at that time that dealt in State scrip. Mr. By Geer was the party I had reference to that offered it to me and also Mr. Odell.

Q. You, however, had to get somebody to take it from them? A. Yes, sir.

Q. You had to make application for it?

A. Yes, sir.

Q. Through somebody that was taking it for you?

(Testimony of Horace G. McKinley.)

A. Yes, sir.

Q. Those parties were usually secured for a small consideration?

A. In most cases, yes; that is, if we wanted to get land in that way.

Q. Now, then, up here in this 14—2 and 3, there, was all of the Mealey claims taken after Kribs and you and Puter had your deal?

A. What do you mean by the Mealey claims?

Q. I mean the Mealey claims that are included in these **[617—449]** two suits to follow this?

A. Yes, I guess they were. I don't know anything about that part at all. I stepped right out of that part of the country when this deal was closed out.

Q. But you do know, as a matter of fact, that those claims were located subsequently?

A. Yes, sir.

Q. And by timber locations?

A. I think so, yes, sir, in most cases.

Q. And after Mr. Kribs had been up there?

A. Yes, sir.

Q. With you? A. Yes, sir.

Q. And most of them, after Mr. Smith had been up there in charge?

Mr. UELAND.—Objected to as irrelevant in this case.

Mr. McCOURT.—The object of putting this Kribs business in here is this: To show that they could have acquired scrip for $3.00 per acre, and it was no use of getting into a fraudulent scheme. I want to show they went on afterwards and got a lot more land

(Testimony of Horace G. McKinley.)

under apparently the same arrangement.

Mr. LIND.—That will be evidence in the later cases.

COURT.—I don't think that has any effect. He wants to show that they went on taking land under the same arrangement.

Mr. LIND.—It is too vague. I object specifically on the ground that the proposed testimony is too vague and uncertain to have any value for any purpose.

COURT.—The District Attorney will have to make it definite. I understood it was definite.

You may see if he knows anything about it. Confine it to his personal knowledge. **[618—450]**

Q. (Read.)

Q. Do you know when Mr. Smith first went into that territory himself, personally? Visited the land?

A. Only by what I learned here yesterday. I had forgotten up to that time.

Q. You don't know—have no personal knowledge of it?

A. No personal knowledge, no.

Q. You do know, however, that Mr. Smith and Mr. Kribs secured their lands in that locality—in that locality after they secured those you people were interested in?

A. I know that by hearing it, yes.

Q. Didn't you know at that time that there were other timber and stone entries made in there subsequent to yours a short time?

A. I suppose I did. I did not keep track of the

matter at all in there after that time. I know Mealey went ahead. That is, I would hear, or meet him somewhere on the train or somewhere else, and they would say they was still locating up in their part of the country—something like that. I paid no attention.

Q. Did you know that in the early part of 1901 following that, that Mr. Kribs also secured quite a large tract of land known as the Givens and McMullen claims under the Timber and Stone Act?

A. Never heard of that at all.

Q. Don't know about that? A. No, sir.

Q. Now then, why didn't you fellows file scrip? What was the reason you didn't file scrip on that?

A. Well, we was pretty short of cash, Mr. McCourt.

Q. That was the reason, wasn't it?

A. It certainly was. **[619—451]**

Q. If you had not been short of cash you would have filed scrip and got the land immediately?

A. We would.

Q. So you had to take some sort of a scheme to hold the title open until you could raise the money?

A. Yes, sir.

Q. And that was by putting entrymen on the land? A. Yes, sir.

Q. As stated—by you perhaps—you would have ninety days' time in which to raise the money, and if you could not make it in that time, could have a republication—give some excuse for a republication and get another extension of time?

(Testimony of Horace G. McKinley.)

A. To raise the money and handle the land, yes, sir.

Q. Yes. A. To make final proof with.

Q. Now, if the Court will permit me, I wish to go back to that figuring just a moment. You say—you talk as though you and Puter wanted to get the location fee? A. At that time, yes, sir.

Q. Now, Puter—the understanding was that Puter should start east immediately as soon as he had made some filing? A. Yes, sir.

Q. And you intended to, right then and there when you and Puter talked that over, to have Tarpley and Bas Wagner help you, or somebody else?

A. Yes, sir.

Q. And you knew the fees in the Land Office would be approximately $10? A. Yes, sir.

Q. You had had sufficient experience with it?

A. Yes, yes. **[620—452]**

Q. With the filings and knew it would be about $10? A. At the time of filing?

Q. No, at the time of proof? A. Yes.

Q. And that the 57 claims would be about $600, approximately?

A. Yes—well, would be $10 apiece.

Q. Well, $570? A. Yes.

Q. And you knew it would take about $20 to get the entrymen down there and back again—

A. Yes, sir.

Q. —two times? A. Yes, sir.

Q. Which would be $1140? A. Yes.

Q. Then you knew it would take—

A. Eleven hundred and what?

(Testimony of Horace G. McKinley.)

Q. $1140? A. No, $1130.

Q. What—20 times 57.

A. Oh, yes, that way. Why don't you take one individual claim? It would be much better to understand.

Q. You thought you were going to make a big pile of money and I want to show you how much.

A. Well, I will get out my pencil and get at this.

Q. $1140 for taking them to Roseburg twice; that is, $20 apiece.

A. 57 at $20 apiece?

Q. Yes. A. All right.

Q. An average of $7.50 to get them to the land and back? A. Yes.

Q. Then a little over $400—we will call it $400.

A. All right.

Q. I think $418—$417. A. All right.

Q. You had already agreed to pay the Mealey's $400? A. Yes, sir.

Q. And you knew you would have to publish these notices? A. Yes, sir. **[621—453]**

Q. Which would be $400—$420 or something like that? A. Yes.

Q. But call it $400?

A. Yes, if you figured it right there.

Q. And you knew that you would be out several trips to Roseburg? A. Yes.

Q. And you would be out something for Dan and Bas? A. Yes.

Q. And something for paying people $5.00 who were to get you some information? A. Yes.

Q. Which would probably be $250?

(Testimony of Horace G. McKinley.)

A. All right.

Q. That would be $3,190? A. All right.

Q. Subtract that from $5,700, leaves you $2,510?

A. Yes.

Q. You also knew Puter would have to go East; that you would have to pay the expenses of whoever was coming to see the land? That would be $500.

A. Well, now, when do you say I knew of this? At the time of filing?

Q. Before you filed at all.

A. That it would cost $500 to go East and secure a party to come here?

Q. And get a party out here—and bring a party out here.

A. I would ask him to show the account if he paid that much.

Q. Leave that off and it is $2,510.

A. All right.

Q. That divided between you and Puter would be $1,200 apiece? A. All right. **[622—454]**

Q. For four months' time? A. Yes.

Q. And if you did have to pay anything to bring a man there it would bring you to $1,000 apiece?

A. All right.

Q. That was all you had in mind for all this trouble you were going to have? A. Yes.

Recross-examination.

Q. There is one reference in one of the letters—one suggestion by Mr. Puter to get a postponement of the date of the final proof. Why did he desire the postponement?

A. Because at that time he did not have anyone

in the East there that he could interest in furnishing the money for final proof. He had not been able to find anyone. He had approached several people and did not get them interested in it.

Q. Now, at the time that you planned this enterprise that you testified in regard to, did you know how many claims you would be able to locate?

A. We started out expecting to get 40. That is, that was the original contract with the Mealey brothers.

Q. Did you—did you at that time figure and expect that you would have the handling of these claims and make a profit on them after they were proved up on?

A. We might have expected that, but there was nothing said about it.

Q. Well, did you have that in view?

A. Yes, sir.

Q. When you went into the business?

A. Yes.

Mr. McCOURT.—What is that?

Q. (Read.) **[623—455]**

Redirect Examination.

Q. Then you never did think of making $5,700? It was $4,000 you were to make?

A. Well, on the start Mealey said we would start out with that. If there was any above that, why, all right.

Q. But when you started out $4,000 was the price you were figuring on making?

A. No, sir. Our contract called for that much, but we knew there was a larger body of timber land

(Testimony of Horace G. McKinley.)

up in there, but we figured that would be the least.

Q. Well, $2,000 divided between you was the top price you figured on?

A. From the locations, yes, sir.

Mr. GEARIN.—Well, does the Government owe him any money? Is that what you are trying to show?

Mr. McCOURT.—No, I don't think so. I don't think the Government does. I am inclined to think the Government doesn't owe him anything.

Mr. GEARIN.—We will admit it if you say so.

Recross-examination.

Q. What was your view of the Northern Pacific contest—that that was *bona fide* or otherwise?

Mr. McCOURT.—I object to that as immaterial and not competent.

Mr. LIND.—I ask for his view.

COURT.—I think he can answer that.

A. My view was that they was merely trying to run a bluff to get all these parties to step out, so they could get the land for themselves.

Q. Well, did some of the claimants actually get frightened and hesitate about litigating with the railroad company? **[624—456]**

A. Well, I couldn't say as to that. If they didn't it wasn't their fault that they didn't, because they made the bluff strong enough.

Redirect Examination.

Q. In fact, some of them got so scared that they made you raise the price to them, didn't they?

A. For relinquishing?

Q. No, for turning the land over to you.

(Testimony of Horace G. McKinley.)

A. Oh, no.

Q. Some you agreed to pay $50 to, you were made to go to $75?

A. I don't know whether we were or not.

Q. And some you agreed to pay $75 to you had to pay $100?

A. Not on account of the Northern Pacific, I don't think, though it might be so.

Q. You now understand the Northern Pacific people thought and their belief was that you and Puter had located this whole bunch in your own interest?

A. I don't know any such thing, that the Northern Pacific people thought that.

Q. They had you arrested on the strength of it, didn't they?

A. In our own interest, yes. We had it located in our own interest. We did not do it for anyone else's interest. The Northern Pacific people might have thought that, but they could not figure anything illegitimate about it.

Q. That it was your purpose to get the land?

A. I don't know.

Q. And that you had a prior agreement?

A. They didn't make it stick.

Q. And they alleged it in their complaint?

A. They didn't make it stick and we had a trial.

[625—457]

Q. You compromised the trial before you got to the end?

A. We compromised because it took too much

(Testimony of C. E. Loomis.)

money to fight them, not that we thought we would lose out.

Recess taken until 2 P. M. **[626—458]**

Portland, Oregon, April 22, 1910, 2 P. M.

[Testimony of C. E. Loomis, for the Government.]

C. E. LOOMIS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Loomis?

A. At Eugene.

Q. How long have you lived there?

A. Somewhere not far from 20 years.

Q. How old are you, Mr. Loomis?

A. 70 years old past.

Q. Do you know S. A. D. Puter?

A. Yes, sir.

Q. Horace McKinley? A. Yes, sir.

Q. D. W. Tarpley? A. Yes, sir.

Q. Fred A. Kribs? A. Yes, sir.

Q. What official capacity, if any, were you acting in in the years 1900—the entire year of 1900 and 1901?

A. I was a special agent of the General Land Office.

Q. Where were you located, Mr. Loomis?

A. My district was the Oregon City, LaGrande and The Dalles Land districts. My headquarters were at Oregon City.

Q. During the months of April and May, 1900,

(Testimony of C. E. Loomis.)
where were you actively engaged in your official capacity?

A. It is impossible for me to tell. I was in my district. That is all I know about it, sir.

Q. Well, were you not at Roseburg, pending the time that there were a number of Timber and Stone entries **[627—459]** being made there?

A. I cannot give the date. I couldn't even tell you what year it was. I was sent up there by the Department in the absence of the special agent who had charge of the matter, with instructions to cross-examine a lot of entrymen and their witnesses there, when they gave their final proof.

Q. Were those in a number of Stone entries located in Townships 14 South of Ranges 2 and 3 East?

A. I would tell you if I could, but actually I do not know. It is so long ago that I do not know.

Q. For the purpose of identifying these merely, I wish to ask the witness if it was not a number of Timber and Stone entries that had been, immediately prior to the proof, subject to contest brought by the Northern Pacific Railroad Company?

A. Well, I do not know that, Mr. McCourt. I know this, that there was something—some reason for having them specially cross-examined. Further than that I do not know what it was, for I paid very little attention to it. My orders from Washington were simply to go there as the special agent had received a leave of absence, that I was to go there and in his place cross-examine the people.

Q. Well, were the entries of Josephine and Elvira

(Testimony of C. E. Loomis.)

Jacobs among those? A. They were.

Q. S. A. D. Puter?

A. I do not remember.

Q. You do not remember Mr. Puter? [628—460]

A. I did not know Mr. Puter at that time. I have never met him, and I don't remember. If I recollect right, Mrs. Puter had a claim there—Sadie E. Puter—I remember the name.

Q. Do you recall that you acted in that capacity at two different times when proofs were made?

A. I do not.

Q. Once in April and once in May?

A. I don't remember that I went but once.

Q. But the one time?

A. Once. I could not be sure about that—if part of them had been; I know from the routine manner of the business, that if a part of them were not finished at that time, and put off to another time, I should undoubtedly have gone back and finished, so that that might be possible. I could not say that.

Q. Did you meet Fred A. Kribs there during that time? A. Yes.

Q. I will ask you whether or not, when you had completed your cross-examination in those cases, or shortly afterwards, you received any money from Mr. Kribs?

Mr. LIND.—Wait.

A. I don't know just when I received the money from him.

Mr. *EU*LAND.—May it please the Court, the de-

as immaterial, irrelevant, and as not tending to prove any of the averments of the bill of complaint.

Mr. McCOURT.—The purpose of the testimony is to show conduct upon the part of Mr. Kribs, one of the defendants in the case, and at the time a representative **[629—461]** of the defendants now in interest, which indicated knowledge upon his part; that is, the conduct of Mr. Kribs at that time—for what it is worth. It may not show; it may not be sufficient alone; but it will be followed by other testimony, which we think will show conclusively a line of conduct upon the part of Mr. Kribs that is entirely irreconcilable with lack of notice of the character of these entries.

COURT.—Do you expect to show that Mr. Kribs was a representative of Smith?

Mr. McCOURT.—Yes, your Honor, I think it will be conceded that he was.

COURT.—As to Willd or Smith?

Mr. McCOURT.—As to Smith and Willd both. Mr. Smith and Mr. Willd were practically the same thing, it will be shown later on.

COURT.—You expect to show Kribs was a representative of Smith, acting for Smith in this transaction.

Mr. McCOURT.—Yes. I think there will be no question about it. I don't know that they will claim anything else.

Mr. LIND.—Oh, yes, we do.

COURT.—Upon that theory and that promise, I suppose this testimony is competent.

(Testimony of C. E. Loomis.)

Mr. McCOURT.—Certainly, if we cannot connect Smith here, we cannot win the case.

COURT.—You may answer the question.

Mr. *EU*LAND.—May it please the Court, I ask that the time and place be fixed in the question with some certainty.

COURT.—You will make it as definite as you can, **[630—462]** Mr. McCourt.

Mr. McCOURT.—Yes.

Q. Did you, shortly after, acting in your official capacity, cross-examining the entrymen, in those Timber and Stone cases, at Roseburg, Oregon, receive any money from Mr. Kribs?

Mr. LIND.—Do you contend that it relates to these cases in issue?

COURT.—I understand that it is confined to these cases.

Mr. McCOURT.—Yes, your Honor.

COURT.—Certainly you could not inquire into their conduct in any other matters just now.

Mr. LIND.—Does the record show that he cross-examined in these?

COURT.—He said that he remembered the names of some of these applicants.

Mr. McCOURT.—They show cross-examination by C. E. Loomis, Government agent. I won't say all of them, but a great many of them. Proceed.

A. You asked me if I received some money from him.

Q. Yes.

(Testimony of C. E. Loomis.)

A. Barely that question, I did receive some money from him.

Q. Do you know how much it was?

A. No, sir, I do not; but I have an idea it was $75, if I am not mistaken. I could not tell exactly.

Q. You have a right to go ahead and tell the circumstances under which you received it, and the purpose of it, from your standpoint.

A. At some time—I am unable to state whether it was that **[631—463]** day or when it was, I was with half a dozen fellows on the street, of whom Mr. Kribs was one, I found afterwards. I could not remember any of the rest. Somebody asked me when I was going home. I said I had got to find somebody with money enough to lend me money enough to get out of the town with, for I was broke. I laughingly said that. That was in the evening. I had no doubt about my ability to borrow money, for I was well acquainted in Roseburg, but I laughingly made that statement. Some time later in the evening, Mr. Kribs came to me and said, "If you need some money —if you have used up your money—I can lend you some money, if you want it." I said, "Very well; I would just as soon borrow it from you as anybody." And he gave me some money, loaned it to me. I cannot tell you how much, but I think it was $75.

Q. Now, do you know whether you ever paid that money back to him or not?

A. I know that I did pay it back to him.

Q. Did you ever pay it to him personally?

A. I do not know that. I do not know how I fendants represented by us object to this question

(Testimony of C. E. Loomis.)

paid it or when. But I have a faint recollection of leaving the money with a German proprietor of the hotel there for Mr. Kribs. But I could not swear positively that I did, but I think that I did.

Q. How much later?

A. I don't know that.

Q. Now, then, you were acquainted with Josephine Jacobs and Elvira Jacobs at that time?

Mr. *EU*LAND.—Just one moment, if you please. Have you got Josephine Jacobs in this? **[632—464]**

Mr. McCOURT.—Elvira Jacobs.

Mr. *EU*LAND.—We object to Josephine Jacobs in the question, as she is not one of the entrymen.

Mr. McCOURT.—It will be shown that Mr. Kribs afterwards secured, or helped to secure, tried to secure, and did secure some sort of an affidavit or statement from Josephine Jacobs in connection with her claim, which was one of this same group, and Elvira Jacobs together.

COURT.—I understand that evidence should be admitted on the same theory that the other was admitted, because it is alleged to be part of the same transaction.

Mr. *EU*LAND.—Note an exception.

Q. The question was, did you know those people?

A. The question was, whether I knew them before that time or not. It was a little bit misty in my mind whether I did or not; but I think that I knew them before that. I knew those people, knew those two women—Mrs. Jacobs and her daughter. I stated to your last night definitely, that I did know them

before. Now, I think that I did, but I am not absolutely sure of it. But I knew them from that time on.

Q. From the time they made their proof?

A. From the time that they made proof, I knew them.

Q. What was the next connection that you had with the entries of Josephine Jacobs and Elvira Jacobs?

A. At some time afterwards—I don't know when—I cannot give the date at all, or any approximate to it—I was walking on the street here in Portland one day, and I met Mr. Kribs. I had known him and his family for a long time, but I had no business with him at all. But he **[633—465]** came and asked me if I knew Mrs. Jacobs and her daughter. I told him that I did. He said that those two claims with others, he had made some arrangements to obtain, but that a contest had been ordered against them, and that when the special agent went to them to get an affidavit, they would not give one; they said that they had done all they were going to about it. Now, I think he told me that they said that they would not do it unless they were paid for it; and he asked me if I could not go up there, as a friend of his and a friend to them, and suggest to them that they might better sign those affidavits just according to their original testimony. I told him I would do so. I went up, and whether I went up to see them two or three times or not, I don't know, but I think I did. At all events, when I reached them, they said that

(Testimony of C. E. Loomis.)

they would not sign that affidavit unless they were paid for it. Kribs gave me money, and said that he was willing to pay a certain amount of money to get them to sign those affidavits, rather than to have to go through the expense of a contest, for he would have all the expenses to pay if they went to contest. Now, he gave me a certain amount of money—I don't know how much, but I have an idea of about how much it was—and told me that if I could get them to sign it within that money, that any that there was over, I might have myself. Now, I am a little uncertain about how that came, but I know that he gave me a check, which I went and got cashed in order to carry the money to them, and so have my own in money, instead of having any question about it when I got up there, if I saved any. I went up there and talked with them; told them that there was no **[634—466]** earthly reason why they should refuse to sign an affidavit covering the same ground that they had already covered, and convinced them of it; but they said that Kribs was making lots of money, and making money off of them, off their action, and they proposed to have some of it themselves, and they would not sign unless he paid them. So I made some sort of a bargain with them, and paid them, and I think took a statement to cover points that they would be obliged to swear to, and had them sign it, and carried it back to Kribs. That was as far as I ever went with it. I had no authority in those cases as a special agent whatever. I did not consider that I was acting as a special agent at all, and had no authority—noth-

(Testimony of C. E. Loomis.)

ing whatever. They belonged to the man in the Roseburg district, and I was simply acting as a friend of both parties.

Q. What is your recollection as to the amount you gave them?

A. I am uncertain about it. I have been shown the checks that were given to me by Kribs, and I am utterly unable to place the two, except from thinking it over and the circumstances. One check is for $75 on a Roseburg bank. Now, upon mature consideration, I am inclined to think that that is the check that he gave me at the time that I borrowed the money of him. The other check is for $150. Now, as near as I can remember, I did not give them all of that $150, but a portion of it remained with me, as my pay for doing the work. But if I did give them the whole $150, he certainly gave me some more, for I know that I got some pay for doing that work. **[635—467]**

Q. This transaction with the Jacobs people was some considerable time after Kribs had given you the $75 in Roseburg?

A. I think it must have been. I don't know that. I think that that $75 check must be the money that he loaned me in Roseburg, and that the other is a check representing the amount that I paid to the Jacobs—Mrs. Jacobs and her daughter.

Q. I call your attention to the affidavit or statement of claimant, in the report of fraudulent claim or entry, in the entry of Josephine Jacobs, and I will ask you if that is the one prepared by you and de-

(Testimony of C. E. Loomis.)

scribed by you?

A. No, sir, I never saw it before. I don't know anything about it. It is not my handwriting. I never drew up an affidavit in that sort of shape at all. If I drew one up, I just sat down and wrote it out, and had them sign it, in my own handwriting. I never saw this before. This is not my report. This is Stratford's report.

Q. That one is not signed really by the claimant, is it? A. How is that?

Mr. McCOURT.—I asked that that one may be placed in evidence, in the Josephine Jacobs' case.

Mr. LIND.—I think that is irrelevant, your Honor. He says there is no paper in it bearing his signature or in his handwriting.

Q. Didn't you take the paper that you took up there, wasn't it written out in typewriting—the questions—and when you got up there, Josephine Jacobs herself filled in the answers, in your presence?

A. No, sir. I didn't take any papers up there. **[636—468]**

Q. Didn't take any at all?

A. No, sir. Anything that I took from her at all, I sat down and wrote out myself.

Q. Examine the one in Elvira Jacobs—claimant's affidavit—being Government's Exhibit 30.

A. It is the same condition. I know nothing, absolutely nothing at all, about them.

Q. You say the ones you got you handed to Kribs?

A. The ones I got I handed to Kribs.

(Testimony of C. E. Loomis.)

Mr. McCOURT.—I will reoffer that later.

Q. I will ask you if this was not in the month of July that you went up there to the house?

A. It was 10 years ago. I absolutely could not tell you—cannot tell anything at all about it.

Q. Do you recall it was in the summer time?

A. I don't even recall that, sir.

Q. Well, I exhibit to you a check dated March 13, 1901: "First National Bank of Roseburg pay to C. E. Loomis or order $150.00." Signed Fred A. Kribs. Endorsed "C. E. Loomis."

A. This is my endorsement unmistakeably. This is my endorsement on the back there unmistakeably.

Q. Now, isn't it a fact, Mr. Loomis, that Mr. Kribs gave you $125 to give to the Jacobs people, and that this $150 item is probably something else?

A. No, sir, that is not possible, because whatever he gave me he gave me in a check, and I went and had it cashed.

Mr. McCOURT.—I offer this check in evidence.

Marked "U. S. Exhibit 114."

Mr. McCOURT.—I now exhibit to you a check "Roseburg, Oregon, July 26, 1901. First National **[637—469]** Bank of Roseburg, Pay to Dr. C. E. Loomis, or order, $75." Signed Fred A. Kribs. Endorsed "C. E. Loomis," and ask you if that is one of the checks you received?

A. I acknowledge that endorsement, sir. That is my endorsement.

Q. Now, that check is dated some four months later than the $150 check.

(Testimony of C. E. Loomis.)

A. I don't remember anything at all about the matter.

Q. And some fifteen or fourteen months later than the time you took that cross-examination down there.

A. I don't remember about those things at all.

Mr. McCOURT.—I offer that in evidence.

Marked "U. S. Exhibit 115."

Cross-examination.

(Questions by Mr. LIND.)

Mr. Loomis, how long had you been in the service at this time?

A. I am not in the service now.

Q. No, I mean at the time this transpired, how long had you been in the Government service?

A. I couldn't tell. I was in there four years, and then an interim of four years that I was out, and then back in again.

Q. Was this during the second time of your service or the first time?

A. I would have to determine when the dates were. I don't know. It must have been the second time, I think, but I am not sure about that.

Q. You were never regularly assigned to duty in the Roseburg district, were you? **[638—470]**

A. Not at that time. I formerly held the Roseburg district years before that, but I had been out of it for a long time.

Q. At that time?

A. I had no business there whatever.

Q. You had no business there?

(Testimony of C. E. Loomis.)

A. Except I was specially ordered there by the department.

Q. To cross-examine some timber claim claimants at the time of final proof?

A. I just received that notice from the department, to go down and appear at Roseburg, at a certain date, and to cross-examine the entrymen and their witnesses on certain timber claims that were to be proved up on there.

Q. And you did that? A. I did that.

Q. Had you met Mr. Kribs prior to that time?

A. I knew Mr. Kribs. I had not met him—I don't think I had met him for quite a long time before. I don't know about that. I don't know when I saw him before that. I had known him before that. I had met him and his family before that.

Q. Here at Portland?

A. Well, I should presume likely, and still I may have met him at hotels somewhere else—I don't know. I had been introduced to his wife and to his two or three little boys, and knew them all reasonably well.

Q. Did you have any talk with Mr. Kribs in regard to these claims on that occasion?

A. Not one word.

Q. Did you know, at the time that you cross-examined the **[639—471]** claimants, that he was interested in these claims? A. No, sir.

Q. Directly or indirectly?

A. No, sir, I did not know it.

Q. Did you think he was?

A. I didn't think anything about it. I was not

(Testimony of C. E. Loomis.)

there for that purpose. I was not ordered there to examine into the claims in any possible way. I was simply ordered there to do one definite thing—to cross-examine those people, and nothing else. I did that and left.

Q. Did you do that?

A. I did that and nothing else.

Q. Did you do it truly and faithfully?

A. As faithfully as I knew how.

Q. Did you misstate any of the answers to the questions that were given to you to read to them?

A. There were no questions given to me to read to them. It was left entirely to my own election what I should ask them. And as fast as they made their proofs, I went right at them, and asked such questions as occurred to me in regard to their seeing the land, having been on the land, having made prior bargains to sell, and such things that were unlawful. And the questions and the answers were taken down by a stenographer, and I never saw them afterwards. They were sent to Washington with the papers. I knew nothing about them afterwards.

Q. Was it after the hearing and these cross-examinations had been held, that you made that statement in the presence of Mr. Kribs that you would go home if you had the wherewithal?

A. Yes, it was after that. **[640—472]**

Q. How long after, if you remember?

A. I couldn't tell you.

Q. Do you know whether it is on the same occasion?

(Testimony of C. E. Loomis.)

A. I don't even know that, sir. I do not know that. I know that I borrowed money of him to come out of Roseburg.

Q. Now, did you receive or accept that money with any understanding that it should influence your official action or the discharge of your duties?

A. Not at all. I did nothing for him. There was nothing for him to pay me for. I had done nothing for him—not a thing in the world. I had simply gone there in the discharge of duty and cross-examined those people. That is all I did. I had nothing else to do with the cases. I never examined the claims, never made any reports on them, never did anything of the kind. I never did anything for him in connection with it.

Q. Now, did Mr. Kribs, by word, suggestion, or conduct, intimate to you that he wanted to influence your official action? A. Not in any way, sir.

Q. In regard to the Jacobs matter, that was entirely outside of your official duties?

A. I considered it entirely outside. I had nothing to do with the cases. They were in the hands of another special agent. He was doing it, and he could not get them to make the affidavits. I thought that they ought to cover the ground that they had already covered, willingly, and I was willing to go and tell them so.

Q. You don't know whether those affidavits were ever transmitted to the General Land Office or not?

[641—473]

A. I know that mine were not. I know that the papers that I had them sign, I know they were not,

(Testimony of C. E. Loomis.)

because I afterwards met—am I permitted to go that far?

Mr. McCOURT.—I don't care. Anything you want to tell, Doctor.

A. I met special agent Stratford afterwards, and asked him if those women signed the affidavits for him. He said yes, he went up and took the affidavits himself, and put them with the reports. That is all I know about it. So that I know that mine, whatever I took in the way of statements—they were not in proper shape to be sent, as I recollect them; they were simply something to fasten them down until something else could be done—I know that mine did not go to Washington, just by that. That is all I know about it.

Q. Well, now, the statements that you obtained from those women, were there any false statements, any untruths?

A. Not at all, as far as I know. If they made any false statements, I do not know it. I remember distinctly Mrs. Jacobs saying to me over and over, "I used my own money, and my daughter used her own money." Such statements as that I remember. Now, then, all that I had to do was to take their statements—not to inquire into the truth or falsity of them, but simply an affidavit as to themselves.

Witness excused. **[642—474]**

Mr. McCOURT.—If the Court please, we have gotten to a place now where we will have to introduce some bank records, or have some arrangement with counsel by which we can agree.

Mr. LIND.—I think we can agree on anything

(Testimony of O. A. McClallen.)
that is a fact, to save time.

Mr. McCOURT.—We have about agreed, if the Court pleases, that the cashier of the bank at Roseburg may make a certificate of these matters, which we have a showing of here, and upon his certificate it will be admitted as a correct transcript of the record, the bank's record, for whatever it is worth; subject, I assume, to any other objection.

Mr. GEARIN.—Any objection we may have to it for incompetency and irrelevancy, the same as if the witness was on the stand. That will save a great deal of time. **[643—475]**

[Testimony of O. A. McClallen, for the Government.]

O. A. McCLALLEN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

What is your business, Mr. McClallen?

A. Hotel business.

Q. Were you conducting a hotel in Roseburg known as the McClallen House in 1900?

A. I was employed there during the year 1900, yes, sir.

Q. You were not conducting the hotel, yourself, at the time? A. No, not personally.

Q. I have here what is designated as the room back of that hotel covering that period. Have you the registers here covering that period?

A. No, sir.

(Testimony of O. A. McClallen.)

Q. (Mr. McCOURT.) Now, I understand counsel do not make any question but what the parties were there, or that they had the room at least when the book indicates.

Mr. *EU*LAND.—What is this for?

Mr. McCOURT.—Just merely to show his presence there at the time—when he got there and when he left, in April and May of 1900.

Mr. *EU*LAND.—Well, there is this about it. He was there a great deal at that time, and he may have paid for a room when he was not there at all. I would not want to make an admission that would not be in accordance with the facts.

Mr. McCOURT.—Let us ask this man what this book shows that he has in his hand.

Mr. LIND.—You better ascertain whether the book **[644—476]** is any indication whether he was there, or whether he was just paying for the room.

Mr. GEARIN.—There is nothing there to show.

Q. Does that book show whether or not the man was there or not at the time? A. It does.

Q. You can tell from the entries there whether a man was at the hotel, actually at the hotel at the time? A. Yes, sir.

Mr. McCOURT.—That covers it.

Mr. GEARIN.—Ask him if he knows the clerk's writing.

Q. Is that your writing?

A. That is the proprietor, Mr. Good's handwriting, most of it there. This is what is known as the transfer register at the hotel, when a man registers, it is transferred and registered in this book.

(Testimony of O. A. McClallen.)

Mr. LIND.—Why not let him make a copy of this?

Mr. McCOURT.—I think that ought to go in now while he is here, and let him go, and be subject to your explanation of it. We will keep the book here, and you can look at it.

Mr. LIND.—That is all right.

Q. That book that you have in your hand there is made up in alphabetical order, is it? A. It is.

Q. Well, will you please examine the book in the month of April, if it shows the month of April, and state to the Court the entries that occur in the book, as to Mr. Fred A. Kribs?

Mr. LIND.—Read the entries right into the record. **[645—477]**

A. During the month of April?

Q. Yes.

A. The first entry is on the 13th day of April. Mr. Kribs, wife and two children, arrived to supper in the evening, left on the 21st day of April, at breakfast.

Q. Read the entire entry.

A. And McMullen supper, lodging and breakfast $1.50. Total paid $36.60.

Q. I note in that same entry under the column "House," the designation "Mc" opposite the entry which you have just read.

A. They also have an annex at the hotel there, and this is to show that he had Room No. 1 in the main hotel, what is called the Mc. House—the McClallen House. Some entries are made that way. Here is one, Room 44 in the Van Houghton House. All the entries are not made that way, but some of

(Testimony of O. A. McClallen.)

them were at that time.

Q. The next entry?

A. On the 25th day of April he was there. Kribs and boy, had Room 1. Phone 90 cents, 50 cents, $1.20, 50 cents, 50 cents, 95 cents. Laundry 90 cents. Left on the 30th day of April, after lodging. Forwarded $12.50—the bill was not paid at that time. The next entry is on the 28th day of April. Room 1, McClallen House. Kribs, Mrs. and boy. Arrived to supper left on April 30th after lodging, total amount $5.00 forwarded.

The next entry is on the 1st day of May, 1900. Room 1 McClallen House, Kribs and Fred. Forwarded $17.50. Phone $5.45, drayage, 50 cents, left the 22d day of May after supper. Total amount $112.90 **[646—478]** marked paid.

That $112.90 also includes another entry here, for the 1st day of May, 1900, Mrs. Kribs and Bud. Here is an entry on the 11th day of May. B. and K. left, returned on the 14th day of May, Phone 80 cents, laundry 35 and 30 cents. Left on the 22d day of May, after supper. Total amount paid $112.90. That entry, I would judge, means that they left at breakfast on the 11th day of May—Kribs left—"K," I notice it now, 11th day of May Kribs left. The next entry is on the 1st day of June, occupied Room 1. F. A. Kribs arrived for lodging. Left on the 4th day of June after supper. Total amount paid, $4.50. On the 5th day of June, 1900, F. A. Kribs occupied Room 1. Came for lodging. One extra meal. Left on the 6th day of June. Total amount paid, $2.00. The 7th day of July, 1900, F. A. Kribs

(Testimony of O. A. McClallen.)

and family, Room 1. Arrived for lodging. Express, 70 cents McMullen account. Laundry 25 cents. Davis and D, $11.00. Now, there are four or five accounts here right in a row. The accounts are transferred. Left on the 31st day of July after lodging. Total amount paid $159.15.

Mr. McCOURT.—I think that is far enough to go with this case, if we can use a copy after it. Can't we use the book now, with the instruction the man has given us, without making a copy?

Mr. LIND.—Yes, certainly.

Q. I wish you would look there for the account of Horace McKinley about that time, or his presence there, if he was there. **[647—479]**

A. January 18, 1900, McKinley and Tarpley.

COURT.—There is not any controversy about that. Mr. McKinley testified.

Mr. COURT.—I guess not. Only I wanted to show these parties were staying at the same hotel.

Mr. LIND.—If it is a fact, it will be conceded.

Mr. GEARIN.—That was the leading hotel in the place?

Mr. McCOURT.—As a matter of fact, the room book does not show that he stopped at this hotel, although he says he always stopped there.

Mr. GEARIN.—Well, there was no room, I guess, at that time. Crowded there.

Mr. McCOURT.—He may have eaten there. Would that show?

A. It would not show that. Only where they had rooms.

(Testimony of O. A. McClallen.)

Cross-examination.

(Questions by Mr. LIND.)

I want to ask you—for instance, your ledger shows that Mr. Kribs and family took a room on April 13th, and that he paid for that room until April 21st.

A. Yes, sir.

Q. Now, it does not show whether Mr. Kribs was constantly in Roseburg during that time?

A. No, sir.

Q. Likewise in regard to the dates between May 1st and May 12th.

A. Well, this entry of May 11th. This shows an entry on here of May 11th, with the initials B and K, left. [648—480] returned on the 14th day of May for lodging. I would infer from that that he left after breakfast on the 11th day of May.

Q. Yes, but you would not infer that he was at the hotel constantly between May 1st and May 11th?

A. This book would show that he was there all the time from May 1st.

Q. That he or some member of his family was there all the time? A. Yes.

Q. That is all it shows?

A. That is the only entry it shows, where anyone had left of the family, at that entry there, and returned on the 14th.

Q. He paid for the room during that period?

A. This book shows the bill was paid $112.90. I would imagine that he paid for it all the time, yes.

Q. Now, take the dates between April 25th and 30th. You said the book showed that he took a room, he and his family took a room on April 25th,

(Testimony of O. A. McClallen.)

and was there until April 30th.

A. This entry shows that Kribs and boy arrived on the 25th day of April and left on the 30th day of April. Total amount paid, $12.50. This also shows the rate, $3.00 per day. It could be easily figured up how long he was there, and what he paid for.

Q. Well, you read another entry, April 28th and 30th. How does that come in?

A. This entry shows here on the 28th day of April, Kribs, Mrs., and a boy came for supper; left on the 30th day of April. It is just dittoed under Kribs. [649—481] It does not say Kribs—it is Mrs.

Q. Doesn't the entry show the young man stayed there all the time, and that Kribs was probably gone?

A. No, it doesn't show that anyone had left whatever.

Q. That is, it doesn't show one way or the other?

A. No, sir.

Q. It simply shows he had the room?

A. The first entry says, Kribs and Boy. And the next entry is dittoed, Mrs. Kribs and boy—probably Mrs. Kribs and boy. They all occupied the same room, and they left the same time.

Q. Then between the dates given in May the record shows that he paid for the room. It does not show whether he was there all the time or not.

A. Only that one entry where it is marked here, May 11th and returned on the 14th of May.

(Testimony of O. A. McClallen.)

Redirect Examination.

Q. The record does show in some of those instances there that Kribs himself was absent part of the time? A. This entry here, yes, sir.

Q. And if that had occurred in the other entries, that same sort of an entry would have been made?

A. It should have been made, yes, sir. When they were only out a meal, there was no note made of it.

Mr. McCOURT.—The reading of those entries can take the place of the introduction of the book.

Mr. LIND.—Oh, yes, certainly.

Witness excused.

Whereupon proceedings were adjourned until tomorrow morning at 10 A. M. **[650—482]**

Portland, Oregon, April 23, 1910, 10 A. M.

Mr. McCOURT.—There is a matter of record which I think counsel can agree upon, and that is this: That the tax records of Linn County, Oregon, show that the taxes upon the land involved in this case for the year 1907, amounting to $777.82 were paid by Nils O. Werner, by Frank Alley, agent, on the 19th day of March, 1908, by tax receipt No. 4524; and that they were at that time assessed to Nils O. Werner; and that the taxes for the year 1906 on the same land amounting to $844.01 were paid March 11, 1907, by Nils O. Werner, by Frank E. Alley, agent.

Mr. UELAND.—May it please the Court, while we admit that the record shows what the District Attorney has stated, we don't make the admission that the taxes were in fact paid by Nils O. Werner,

but the record shows that there was an agent.

Mr. McCOURT.—I suppose we could not show any more by this than the record itself will show.

Mr. UELAND.—I don't want the admission to be construed they were in fact paid by him.

COURT.—You will admit that the records of Linn County show what the District Attorney says?

Mr. EULAND.—Yes.

McCOURT.—Of course, we offer that to show where the records indicate the title was at that time.

Now, if the Court please, there are certain records that we assume are in the possession of the defendants, and we have made demand upon them to produce them. Among those we wish are the original deed from John A. Willd to Mr. Greacen, and from him to Hubert E. Rogers; from Rogers back to Werner and from Werner to the Linn and Lane Timber **[651—483]** Company.

Mr. UELAND.—We have not the deed from Willd to Greacen.

Mr. McCOURT.—Have you the deed from Greacen to Rogers?

Mr. UELAND.—We have not.

Mr. McCOURT.—From Rogers to Werner?

Mr. UELAND.—We have not.

Mr. McCOURT.—Do you know where those deeds are?

Mr. UELAND.—No.

Mr. McCOURT.—Have you the original mortgage?

Mr. UELAND.—Mr. District Attorney, while I don't know where these deeds are, I think in all probability they are in the office of the Linn and

Lane Timber Company. I did not make an effort to pick out these deeds. I don't think you called for them. You called for two deeds, and those I have, and the reason I did not pick out these others is because there is no issue on the pleadings as to these conveyances.

Mr. McCOURT.—No, there is no issue, although the documents themselves might indicate a conduct which would bear out the allegation.

Mr. UELAND.—You will give me credit for not having specified these in the notice.

Mr. McCOURT.—I have not examined it, but I thought it called for all of those.

Have you the original mortgage with you of Werner to Arnsell? I don't care so much about the mortgage if you have the note?

Mr. UELAND.—I may have that at the hotel. I have not it here. That is not specified in your notice.

Mr. McCOURT.—Will you look up that and try to produce it Monday morning? **[652—484]**

Mr. UELAND.—I will.

Mr. McCOURT.—I understand it was endorsed by C. A. Smith.

Mr. UELAND.—I cannot say as to that, but if I have it I will bring it.

Mr. McCOURT.—Now before calling for the two deeds which counsel admits he has, I want to place in evidence the deed to Willd and the mortgage to Kribs of Douglas Adkison—a certified copy of the record—so as to complete that entire record.

Mortgage marked "U. S. Exhibit 116."

Deed marked "U. S. Exhibit 117."

Mr. McCOURT.—And similar deed and mortgage

of Charles Barr and wife.

Mortgage marked "U. S. Exhibit 118."

Deed marked "U. S. Exhibit 119."

Mr. McCOURT.—Similar deed and mortgage of Harry C. Barr.

Mortgage marked "U. S. Exhibit 120."

Deed marked "U. S. Exhibit 121."

Mr. McCOURT.—A like deed and mortgage from Hugh Blakely.

Mortgage marked "U. S. Exhibit 122."

Deed marked "U. S. Exhibit 123."

Mr. McCOURT.—A like deed and mortgage from I. R. Borum and wife.

Deed marked "U. S. Exhibit 124."

Mortgage marked "U. S. Exhibit 125."

Mr. McCOURT.—A similar deed and mortgage of Peter Buffington.

Mortgage marked "U. S. Exhibit 126."

Deed marked "U. S. Exhibit 127."

Mr. McCOURT.—Similar deed and mortgage of Frank W. Burford. **[653—485]**

Deed marked "U. S. Exhibit 128."

Mortgage marked "U. S. Exhibit 129."

Mr. McCOURT.—Similar deed and mortgage of Charles Burley.

Mortgage marked "U. S. Exhibit 130."

Deed marked "U. S. Exhibit 131."

Mr. McCOURT.—Similar deed and mortgage of James B. Cooley and wife.

Mortgage marked "U. S. Exhibit 132."

Deed marked "U. S. Exhibit 133."

Mr. McCOURT.—A similar deed and mortgage from John L. Green and wife.

Mortgage marked "U. S. Exhibit 134."

Deed marked "U. S. Exhibit 135."

Mr. McCOURT.—A similar deed and mortgage of Elvira S. Jacobs and husband.

Mortgage marked "U. S. Exhibit 136."

Deed marked "U. S. Exhibit 137."

Mr. McCOURT.—Similar deed and mortgage of John J. Jaggy.

Mortgage marked "U. S. Exhibit 138."

Deed marked "U. S. Exhibit 139."

Mr. McCOURT.—A similar deed and mortgage of Benjamin F. Kirk and wife.

Mortgage marked "U. S. Exhibit 140."

Deed marked "U. S. Exhibit 141."

Mr. McCOURT.—Similar deed and mortgage of Elam Miller.

Mortgage marked "U. S. Exhibit 142."

Deed marked "U. S. Exhibit 143."

Mr. McCOURT.—A deed of S. A. D. Puter and wife to John A. Willd bearing date the 23rd day of April, 1900.

Deed marked "U. S. Exhibit 144."

Mr. McCOURT.—A deed of Sadie Puter and husband to John **[654—486]** A. Willd bearing the date April 23, 1900.

Deed marked "U. S. Exhibit 145."

Mr. McCOURT.—Deed of Zebulin Smith to John A. Willd, dated the 23d day of April, 1900.

Deed marked "U. S. Exhibit 146."

Mr. McCOURT.—Also a correction deed of Zebulin Smith to John A. Willd, bearing date June 13, 1900.

Marked "U. S. Exhibit 147."

Mr. McCOURT.—Mortgage to Kribs and deed to Willd of Jacob W. Stillwell.

Mortgage marked "U. S. Exhibit 148."

Deed marked "U. S. Exhibit 149."

Mr. McCOURT.—Like deed and mortgage of George L. Thompson.

Deed marked "U. S. Exhibit 150."

Mortgage marked "U. S. Exhibit 151."

Mr. McCOURT.—Certified copy of a deed of John A. Willd and wife to Robert F. Greacen, bearing date September 14, 1900.

Mr. UELAND.—We object to that because the averment of the bill as to that is expressly admitted in the answer. I think it has no bearing upon the issue of this case.

Mr. McCOURT.—I am going to follow that by a Linn and Lane Timber Company deed, and it will perfect the entire record here.

COURT.—You can put it in. I don't know what bearing it will have on the case.

Mr. McCOURT.—I think in the matter of recording, it may have some bearing together with the others.

COURT.—Is that dated 1900?

Mr. McCOURT.—Yes, the 14th day of September, 1900. Filed for record March 4, 1901. **[655—487]**

Marked "U. S. Exhibit 152."

Mr. McCOURT.—I now offer the deed of Robert F. Greacen to Hubert E. Rogers, bearing date the 8th day of October, 1900, filed for record March 4, 1901.

Marked "U. S. Exhibit 153."

Mr. McCOURT.—I now offer deed of Hubert E.

Rodgers and wife to Nils O. Werner, bearing date the 21st day of December, 1904, filed for record, December 31, 1904.

Marked "U. S. Exhibit 154."

Mr. UELAND.—May it please the Court and the District Attorney at this time, it occurs to me I would like to see whether it might not be understood that, if the District Attorney and the attorneys for the defendants can agree upon substituting for this mass of documentary evidence as stated, what it shows, in order to reduce the record, the Court will have no objection to substitute it for the record.

Mr. McCOURT.—You mean for this Court—the stenographer does not include these in the record.

Mr. UELAND.—But suppose it should go up?

Mr. McCOURT.—There will be no question about that. We can do that. If necessary it may be agreed it may all go up without being printed or any other statement that we can agree upon.

Mr. UELAND.—I thought we might agree upon a statement upon what all of this mass of documentary evidence shows, that is satisfactory to the District Attorney and ourselves and reduce the record.

COURT.—I think it will facilitate the final adjustment of the case if the Court does not have to go through these and make up a tabulated statement himself.

Mr. McCOURT.—We have that all arranged so it can be presented. **[656—488]**

Mr. McCOURT.—Now, that deed of C. A. Smith, if you please, to the Linn and Lane Timber Company.

COURT.—Did that last deed vest the title in Smith?

Mr. McCOURT.—No, it conveyed it to Werner.

(Mr. Ueland hands District Attorney deed from Smith to Linn and Lane Timber Company.) **[657—489]**

Mr. McCOURT.—Now, there is a matter I would like to put in the record. I have a witness who could testify to it, but it seems to me that we should be able to have the record show that without calling a witness. That is this: An examination of the Linn County records was made by the Government shortly before the commencement of this suit and the two kindred suits, a few days before, and at that time there was nothing in any of the records, either in the Recorder's office, the Clerk's office, or the Assessor's office, or upon any other public record of Linn County, showing any interest, claim or title by the Linn and Lane Company in or to any of the lands involved in this suit.

Mr. UELAND.—We want to save the attorney all possible trouble, and the record and proof now shows that the deeds by which the title is vested in the Linn and Lane Company were not recorded until September 9, 1908, so upon that subject we don't need any question, but to make a wholesale admission about absolutely nothing of record, I don't want to do that. We don't know that ourselves. We cannot do that however much we would like to oblige you, Mr. District Attorney.

Mr. GEARIN.—What do you claim?

Mr. McCOURT.—I claim there is nothing there at all. That is what I want the record to show. There was nothing that could disclose to us any interest or

title in the Linn and Lane Company at that time.

Mr. UELAND.—We cannot admit that. We cannot make an admission that might be misconstrued.

Mr. McCOURT.—I don't know how it can be misconstrued.

COURT.—Call your witnesses. **[658—510]**

Mr. McCOURT.—Now, if counsel will let me have those four letters that we looked at the other night.

Mr. UELAND.—Here they are. Before I forget it, Mr. District Attorney, I will state that the original note and mortgage from Werner to Arnsell that you asked for the other day, I did not find among my papers.

Mr. McCOURT.—I wish to offer in evidence, if the Court please, letter of July 26, 1900, of C. A. Smith to S. A. D. Puter, or rather, I will offer it for further identification when Mr. Puter comes back. I want to offer it in connection with Mr. Puter's testimony, but I will have to have Mr. Puter to identify it.

Mr. LIND.—We will admit it. We will not dispute the genuineness of the document.

Mr. McCOURT.—Then I will offer the letter in evidence to be supplemented by Mr. Puter's testimony.

Marked "U. S. Exhibit 179."

[U. S. Exhibit No. 179.]

"Minneapolis, Minn., July 26/00.

Mr. S. A. D. Puter,
Portland, Ore.

Dear Sir—

You will remember at different times we talked

about the twenty-four claims that the Northern Pacific contested, and which they were permitted to take and that you would secure these claims from them.

Has not the time come for you to take action in this matter? More than three months have passed since the contests, and suppose that the time is nearing when patents will be issued.

Should think the proper way to do would be to go to the Nor. Pac. and buy them off. You probably would have **[659—578]** to also open up negotiations with them for the balance of their timber on Rock Creek. If I remember correctly they have one Town' fairly solid (14–2, if I remember correctly).

Yours truly,
C. A. SMITH LUMBER CO.,
C. A. SMITH."

[660—579]

Mr. McCOURT.—I offer letter of C. A. Smith to R. V. Belt, January 10, 1901.

Marked "U. S. Exhibit 180."

[U. S. Exhibit No. 180.]

"Minneapolis, Minn., Jan. 10/01.

Mr. R. V. Belt,
1314 10th St. N. W., Washington, D. C.

Dear Sir—

I take pleasure to herewith introduce Mr. S. A. D. Puter, Portland, Oregon, who has come to Washington for the purpose of straightening up and securing patents to a lot of land in the Roseburg (Oregon) District, in which I am interested, and

wish you would kindly render him such services as you can in securing the patents for all of such lands as speedily as possible. The lands in question are located in Townships 14 South, Ranges 2, 3 and 4 East, Willamette Meridian.

Yours truly,

C. A. SMITH LUMBER CO.,

C. A. SMITH."

[661—580]

Mr. McCOURT.—I also offer letter to S. A. D. Puter dated January 18, 1901, from C. A. Smith Lumber Company, signed C. A. Smith.

Marked "U. S. Exhibit 181."

[U. S. Exhibit No. 181.]

"Minneapolis, Minn., Jan. 18/01.

Mr. S. A. D. Puter,

Milwaukee, Wis.

Dear Sir—

I have just wired you to Washington, care of Raleigh Hotel, 'Fred thinks breakers are cleared away and everything will be all right' this on the strength of a telegram just received from him, stating that he is assured that everything will be all right, and presume that he knows what he is talking about. I also received a telegram from him dated day before yesterday, reading,

> 'Have known standing two weeks and retained two Parties to make proper arrangements, if possible. Steve can do nothing there, but should see entremen and have them make proper affidavits when agent asks for them. Have matters well in hand. Nelson And Eddy

only people to pull out matters to head off hearing.'

I have all confidence now that Fred is satisfied that this matter will come out all right. It might necessitate some one going to Washington again very shortly. Of course I do not know what arrangements Fred refers to. I received your letter of Tuesday, also your telegram of yesterday. Hope everything will come out all right. The Bank has already telegraphed for the funds, so I presume that matters are working in Humboldt Co.

Yours truly,

C. A. SMITH LUMBER CO.,

C. A. SMITH."

[662—581]

Mr. McCOURT.—I offer letter of January 19, 1901, from C. A. Smith Lumber Company, signed C. A. Smith, to S. A. D. Puter.

Marked "U. S. Exhibit 182."

[U. S. Exhibit No. 182.]

"Minneapolis, Minn., Jan. 19/01.

Mr. S. A. D. Puter,

Milwaukee, Wis.

Dear Sir—

I am in receipt of yours of the 17th. I notice you say you will stay in Washington until Monday. I have just wired you,

'Do not take this matter up with Nelson or Eddy under any circumstances without my seeing them first,'

—which I herewith wish to confirm.

Of course, upon receipt of this you will probably have left Washington for good this trip.

Nelson and Eddy would not in all probability do anything for you or at your request without first being requested by me or some of their constituents from this state to do so, either personally or in writing, and hope that you have not gone too far with them.

Yours truly,
C. A. SMITH LUMBER CO.,
C. A. SMITH." [663—582]

Mr. McCOURT.—I would like to ask counsel for both Mr. Smith and Mr. Kribs whether or not they have any written contract or memorandum made by Puter or McKinley with either Smith or Kribs or both, in relation to the purchase of these lands?

Mr. LIND.—We have not.

Mr. McCOURT.—I would like to ask Mr. Tanner, attorney for Mr. Kribs, whether or not he has any accounts, statement of account, between Mr. Smith and Mr. Kribs, relating to the several payments for these lands, and the expenses in connection with them—original books of entry?

Mr. TANNER.—I have no knowledge of it myself. I don't know what Mr. Kribs may have. I will find out.

Mr. McCOURT.—I understand you gentlemen have none.

Mr. LIND.—We have not.

Mr. McCOURT.—Do you know whether or not there is any such?

Mr. LIND.—There is some data in Minneapolis—what it is, I don't know.

Mr. TANNER.—You want the accounts, if any,

between Mr. Smith and Mr. Kribs about these matters?

Mr. McCOURT.—Yes, about payments. I would like to have the accounts, if any, to see how it was kept—how the charges were made, how often statements were made, and what information was sent with them—the correspondence.

Mr. TANNER.—I will see whether he has it.

Mr. McCOURT.—I would like to see the telegram of January 19, 1901, from Mr. Puter to Mr. Smith, I think it is. (Telegram produced.)

I offer this telegram.

Marked "U. S. Exhibit 183." [664—583]

[U. S. Exhibit No. 183.]

"Washington, D. C. January 19, 1901.

C. A. Smith.

Fred wires sworn statements sent Stratford follows in few days haven't spoken to anyone here. leave for Chicago tomorrow.

S. A. D. PUTER.

11:25 P. M."

Mr. McCOURT.—Counsel has some other correspondence there which I have had not had opportunity to examine and of which I do not know the nature, and I prefer to await the arrival of Mr. Puter, before making any specific demand for further instance. I understand Mr. Puter will start either today or tomorrow. That will bring him here about Monday. I would like to see him before making any specific demand for these instruments, unless I could see them all in advance. Counsel doesn't seem inclined to allow me to examine them unless I

specifically designate them.

Mr. LIND.—We feel that we have such a character to deal with that we would prefer to keep our correspondence until he has testified; that is, unless, of course, counsel wants to use it.

Mr. McCOURT.—I cannot tell whether I want to use it until I can see it. If counsel can allow me to examine it I can tell whether I want to use it or not.

Mr. LIND.—We will after you examine Puter.

Mr. McCOURT.—Now, if the Court please, I think I have but about three more witnesses and all short. Do I understand that the defendants will come on and put in their evidence now, or do you also want to wait for that until Mr Puter arrives?

Mr. LIND.—In view of the fact that Mr. Puter is **[665—584]** coming, we would prefer to wait until his arrival.

Mr. McCOURT.—Of course, I would like to have counsel put in their testimony, whatever they have available, until Mr. Puter takes the stand, rather than come back to it. I don't want to be unreasonable about it. I would like to hear some of their testimony before I put Mr. Puter on the stand.

Mr. LIND.—We haven't any testimony to offer until Mr. Puter makes it necessary to offer some. I don't say that absolutely. There may be some things, but I mean so far as the general scope of the defense is concerned, we can't offer any until Mr. Puter has been examined.

Mr. McCOURT.—I should probably say also that Mr. Rittenhouse of the General Land Office is on his way here, and I might want to call him, and there are

some matters where I may wish to take a short deposition or two, but can't tell until I see what Mr. Puter has to offer, and it is probable that counsel for defense may want a deposition or two.

Mr. LIND.—I would like to ask the District Attorney one question: Do you propose to offer any further testimony to impeach the organization of the Linn and Lane Company or of the conveyances made to it, or is the Government's record complete in those respects, now?

Mr. McCOURT.—So far as I am advised, I think it is, although there may be a small matter or two that I wish to further offer, as to the date upon which the instruments were made. Of course, I don't attack the fact that the Linn and Lane Timber Company was organized at or about the time that these records show.

Mr. LIND.—The reason I made this inquiry, your Honor, **[666—585]** is this: If the record in that respect is complete, so far as the Government is concerned, then it seems to me that with the consent of the District Attorney, if such were the pleasure of the Court, it would be perfectly proper at this state of the case, to make a motion in behalf of the defendants whom we represent, that the bill be dismissed for want of equity. That would raise the question of the action of the Interior Department on this whole matter, and also the question of the statute of limitations; and which we would like to argue at some little length. If the matters we suggest were well taken it would dispose of the necessity of further work in this case.

COURT.—I think it would be advisable to have all the testimony, especially the Government's testimony in, before such a motion is made.

Mr. McCOURT.—I don't think the counsel can argue a motion to dismiss and have further testimony offered. If they want to make a motion to dismiss after I have Puter's testimony in and such other small matters as I wish to put in, that, of course, is their privilege, and that would foreclose them going in later. If they don't want to rely entirely upon the legal question, then they must present evidence.

Mr. LIND.—That is true. That is why I asked you if the Government's case was complete in that regard, and that this might be done by consent without waiving the right of either party to pursue the facts further, if so disposed.

Mr. McCOURT.—The testimony of Mr. Puter will probably elucidate a great many matters connected with that organization, or of that corporation, and the transfer to it, and it would not be fair to the Government or the Court at this time to argue an abstract proposition.

COURT.—We will wait until Mr. Puter comes.

Adjourned. **[667—586]**

Mr. McCOURT.—If the Court please that, I think, is all the testimony we have available just at the present time. Mr. Tanner advises me that he has some papers and other matters that I may look at, or possibly I may look at them, and that can be offered in connection with Mr. Puter's testimony when we get to it later, together with other matters that we will try to check up at that time and place

in the record. Now then, we will end this case for the present, with the exception of these fag ends that we want to close up, and the testimony of Mr. Puter.

Mr. LIND.—With the consent of the District Attorney, we would like to call two witnesses who want to leave the city, just for a few questions. It will be very brief. **[668—617]**

Portland, Oregon, May 3, 1910. 10 A. M.

Mr. McCOURT.—I am compelled to ask a little further indulgence, Mr. Puter arrived last night, and, after the long trip, he was pretty tired, and could not talk to me last night. I just got him in the office about half an hour ago, and I would like a little opportunity to kind of go over the case with him before calling him on the stand. And besides, the bank records, which I thought would be here yesterday morning have only just arrived this morning, and have not been delivered yet at the office from the express office. It will be an hour before I can get them in here. If there is not any undue objection, I would like to have until two o'clock before proceeding with the cases. I do not do this for the purpose of delay, but for the purpose of my own protection, and to expedite the cases as rapidly as possible.

Mr. LIND.—Well, your Honor, I am very solicitous to get through and get back home, but we do not want to embarrass the district attorney in the least. Our personal wishes ought not to stand against his requirements.

COURT.—Very well.

Mr. UELAND.—I would ask the district attorney if he has made up his mind about the appointment

of an examiner to take the testimony East. I would occupy my time in preparing the order, or something of that sort if we are agreed upon it.

Mr. McCOURT.—I have made no further investigation, but I see no reason to object to an officer of the United States Court.

COURT.—Well, you may prepare an order of that kind. **[669—698]**

Mr. UELAND.—And in that connection, should we have any order entered at this time, Mr. District Attorney, limiting the time for the taking of testimony?

Mr. McCOURT.—I would prefer that it should not be limited. However, I can indicate, I think, that the Government will be prepared to take that testimony between the first and tenth of June, but something might happen to interfere.

COURT.—I suppose it is the plan to defer the argument of these cases until the testimony is all in, necessarily. It would be quite a convenience to the court if the testimony could be taken and the argument had at as early a date as convenient to counsel, while the matter is fresh in the mind of the court.

Mr. UELAND.—Could we enter the order to the effect that the taking of testimony is to be concluded as late as, let us say, June 20th?

Mr. LIND.—To be submitted, at the convenience of the Court, before the 1st of July, say.

Mr. McCOURT.—Make that June 25th so as to give me as much time as possible.

Mr. UELAND.—Yes. Let the order be entered on the minutes. Should we prepare the order?

COURT.—You might prepare it, Mr. Ueland, I expect. Then we might just as well set the case down for argument now, to suit counsel's convenience, and then it will be on the calendar.

Mr. UELAND.—We would say, as far as we are concerned, any time between the 15th of June and the 1st of July, to suit the district attorney. **[670—699]**

Mr. McCOURT.—I would prefer, I think, that the argument be set for some date in July.

COURT.—Well whatever date is convenient to counsel will be satisfactory to the court, in June or July.

Mr. McCOURT.—Say the 10th or 12th of July—somewhere about that date.

COURT.—Monday is the 11th. Will that be satisfactory?

MR. UELAND.—That will be satisfactory. And another matter—we will like the privilege to withdraw, for use before the examiner to be appointed, United States Exhibits 155 to 161, inclusive. They constitute those deeds, the deed of June 4, 1906, to the Linn & Lane Timber Company, from Smith and wife, and the other deeds, the Werner deed, and the Swansen deed, and the deed put in for comparison. Either we would have to have the privilege to withdraw them and take them with us, or they would have to be remitted to the examiner officially. It does not make much difference—whatever the district attorney prefers in that respect.

Mr. McCOURT.—I haven't any fear of them being in the hands of counsel, yet the regular course,

I presume, would be for the clerk here to transmit them to the examiner.

COURT.—He can do that. The order may be that the clerk may transmit them to the examiner, or any other exhibits that have been offered here by either party.

Mr. UELAND.—Very well.

Mr. McCOURT.—The order may show that, and if you think of any exhibits later, just instruct the clerk to transmit them.

Whereupon recess was taken until 2 P. M. **[671—700]**

Portland, Oregon, May 3, 1910, 2 P. M.

[Testimony of S. A. D. Puter, for the Government.]

S. A. D. PUTER, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Puter?

A. My home is in Berkeley, but I have an office here in Portland where I reside most of the time.

Q. What business are you engaged in, Mr. Puter?

A. Dealing in timber lands.

Q. How long have you been engaged in the timber land or public land business? A. Since 1888.

Q. How long have you been engaged in that business in Oregon? A. Since about 1889.

Q. Where were you—where did you deal in timber lands prior to coming to Oregon?

A. Humboldt County, California.

Q. And during the time that you have been deal-

(Testimony of S. A. D. Puter.)

ing in lands in Oregon have you dealt in lands elsewhere? A. Yes, sir.

Q. Where, mostly?

A. Oh, in Washington and some in Idaho.

Q. In California? A. Yes.

Q. Do you know Horace G. McKinley?

A. Yes, sir.

Q. And Daniel W. Tarpley?

A. Yes, sir.

Q. When did you become acquainted with Mr. McKinley?

A. I think it was in about 1891 or '2.

Q. What business was he engaged in at the time you became acquainted with him? **[672—709]**

A. Well, he was living at Brownsville, Oregon, and dealing in timber lands for his father at that time.

Q. Where did his father live at that time, if you know? A. West Salem, Wisconsin.

Q. And when did you, if ever—when did you and Mr. McKinley commence operating together in the purchase and sale of lands?

A. Well, I worked with him in 1892 and '3, curing titles for him; that is, I furnished him scrip. And I think we commenced to deal jointly together in the fall of *1903*—1893 or '94.

Q. What sort of scrip were you handling those days?

A. Well, what is called indemnity school land.

Q. And how long did you continue to operate with Mr. McKinley after 1893 or 94?

(Testimony of S. A. D. Puter.)

A. Well, I believe, up until 1904 or '05, somewhere along.

Q. When did Mr. Tarpley become identified with you and Mr. McKinley in the acquisition of lands—sale of lands?

A. Well, that was close to the year 1900—may have been 1888—'89.

Q. 1899? A. 1899.

Q. What was Mr. Tarpley's business when you first became acquainted with him?

A. Well, I believe he was—I learned that he was an attorney, but he hadn't been practicing though. Lived at Salem.

Q. Well, how long did he continue to operate with you and McKinley in the land business?

A. Oh, I think he—he done a little off and on up from that time until *1894*.

Q. 1904? A. 1904.

Q. Basil H. Wagner—do you know him? [673—710] A. Yes, sir.

Q. Where did you become acquainted with him?

A. I believe that he—he was one of the assistant clerks in the State Land Office when I first met him.

Q. You had business there in school lands?

A. Yes, sir.

Q. And when did he, if ever, become an assistant to yourself and Mr. McKinley?

A. Well, he never became very much of an assistant to me, but he did to McKinley, though, in transactions that McKinley and I was interested in. He

(Testimony of S. A. D. Puter.)
operated entirely—mostly, with McKinley.

Q. Are you acquainted with C. A. Smith?

A. Yes, sir.

Q. One of the defendants in this case?

A. Yes, sir.

Q. When did you become acquainted with Mr. Smith?

A. Well, really I can't tell the exact date, but it was very early in 1900. I thought it may have been in the fall of 1899.

Q. And was that acquaintance one in which you and Mr. Smith met frequently? A. Sir?

Q. And was that acquaintance one in which you and Mr. Smith met frequently? A. Yes, sir.

Q. Now, do you recall the matter of the acquisition of some 33 claims in Linn County, township 14—2 and 3, is it? Or 3 and 4? A. I do.

Q. Do you recall the circumstances under which you became **[674—711]** connected with those claims or interested in them? A. Yes, sir.

Q. State to the Court those circumstances.

A. I believe it was in the month of January, 1900, that McKinley informed me of some two or three townships in Linn County, I believe it was 14—2 and 3 and 4 South—14 South, 2, 3 and 4 East—that was surveyed and accepted and was subject to entry, and containing a large amount of good timber land; and wanted to know if we couldn't enter into some scheme for to procure title to the land. Well, I believe we talked the matter over for a week or ten days. He told me that there was other parties in

(Testimony of S. A. D. Puter.)

there looking at the land and that we would have to act pretty quick to see if we may scrip it. A man by the name of Jack D'Arcy was after it; so we concluded then that we would locate a lot of people under the Timber and Stone Act, and furnish the money to prove up on with a view of procuring the title. And we concluded that at the present value of the land, that we could afford to pay the entrymen $100 each for their right, we to pay the Government whatever the cost was of procuring title. So as we had little time to act, we went at it and McKinley procured a large majority of the people, I think *57* all told. The only ones I procured was my wife and I think Mrs. Jacobs and her daughter. Well, the understanding we had—I instructed McKinley—was not to let those people know that—that is, not to talk personally with them in regard to the way we expected to obtain title, but to convey that idea to them through some friend, Tarpley or Wagner or some one that we had *ex*plicit confidence in, that they were to receive $100 for their right, and that was all there was to it; but under no circumstances was he to talk to any of the entrymen. Well, **[675—712]** I believe there was a large number of filings made in January. We procured the entrymen from Roseburg, Albany and Brownsville and some in Portland. And I concluded then to go east, as it was pre-arranged with McKinley and I that I should find a customer who would advance the money; and we had fixed at a price between ourselves that we thought the land ought to be worth. I think it was about $7.00 an acre. So I went east.

(Testimony of S. A. D. Puter.)

long time. I was to take him on to the land, and if it was all right, Stevens was to handle the business when it came to proving up?"

A. Yes, sir.

Q. That is true? Was that a true statement of the facts? A. Yes, sir.

Q. At that time you had him in view to get the funds for proving up, didn't you?

A. Yes, sir.

Q. Now, you say in the next line: "So that man Hanton went right to my man back there and offered him the same lands at $5.00 per acre." You were chiding—I will not read all that—you were chiding McKinley for having advertised the lands for sale before final proof had been made. Now, this man Hanton, isn't that the same man referred to in your affidavit as Hanlon? A. Oh, no.

Q. Isn't that the same name? When you refer to negotiations with a man by the name of Hanlon in your affidavit before Stratford, didn't you have this same man Hanton in mind?

A. No. I didn't suggest that name Hanlon. When Stratford come to me with a bunch of notes —papers—something like that, and the substance, and read it over to me, such and such was the case. "Well," I says, "I could not write it up any better. I think that is about it." And he went and had the copy written up and I signed it.

Q. Then you signed it? A. Yes.

Q. In this same letter that we are considering at this [765—803] time, you mention another man as a possible prospective purchaser for the lands in

(Testimony of S. A. D. Puter.)

controversy in this suit, and you say, "My man's name is McClure of Duluth." You had him in view as a possible purchaser at that time, did you not? A. Yes, I called on McClure.

Q. And as a man to finance the deal and pay the money for the final proofs—didn't you have him in mind also in the event that Stevens should refuse to take them? A. Yes, sir.

Q. Then you go on and say: "So for Christ sake, either write or wire that man Hanton to declare everything off." That is the man at West Superior? A. Yes, sir.

Q. "If we are not mighty careful we never will swing that tract. Now, what I want you to do is to say nothing to no one, only to those parties that filed, and say nothing to them unless they tell you something they heard, for we will have to post them up," and so on. That is part of your language?

A. Yes, sir.

Q. Now, I want to call your attention to a letter dated February 20th, being "Government's Exhibit 98."

A. Yes, sir, that is my writing.

Q. That is in your handwriting, is it not?

A. Yes, sir.

Q. That was written by you to Mr. McKinley?

A. Yes, sir.

Q. You say in that: "I start for Coos County to-morrow, and I expect I will have a hell of a trip. Have to go up there on one of the darndest old tubs you ever see. Will **[766—804]** arrive there at 10 A. M. Saturday, and I expect to leave there

(Testimony of S. A. D. Puter.)

Monday for Salem, and will be in Salem Tuesday and Tuesday night. Will go back to Albany with my man, and Wednesday take him up to 14–2 and 3." Who was your man that you had in mind then?

A. That was Kribs.

Q. Had you said anything to Kribs about 14–2 and 3 at that time?

A. No, but I had in mind, and I thought there would not be anything in the Coos County deal, because I did not think he would take it. I was asking a little more than it was worth. And when I got up there, I would tell him of the other deal, and take him on up to Linn County.

Q. But he never went?

A. Well, we didn't go to Coos County.

Q. You didn't go at all? A. No.

Q. He backed out from taking any trip with you?

A. Well, we stood on the wharf, and we talked matters over, and I thought he was a pretty good man to tie to in the Oregon deal, and didn't think there was anything in the Coos County deal at that figure.

Q. How is that?

A. I didn't think there was anything in the Coos County deal at that figure. I didn't think he would take it.

A. As a matter of fact, both you and he telegraphed up to points on the line in Oregon to ascertain how the weather was—whether it is practicable to go through the woods to look at those school lands.

A. Well, we telegraphed, and the lands were scattered, and he was whining about it, and didn't think

(Testimony of S. A. D. Puter.)

it was a **[767—805]** desirable tract, and didn't like to go, and still if I encouraged him, his instructions was from Smith to go; but I thought it was good policy not to take him, and I didn't insist very hard.

Q. On the 20th of February, you telegraphed to McKinley from San Francisco to ascertain whether there was any snow, and when there would be a trail cut to the Linn lands—when there would be a trail out. You had reference to a trail to the Linn County lands, had you not?

A. Yes, sir. Yes, there was a trail being cut at that time.

Q. Then you say: "By the way, Stevens from Portland may go down to see that land, so in case he does, show it to him, and be darned careful how you talk to him. Don't say much. The best thing for you to do is to get hold of Goddard too."

A. What is that? Get hold of what?

Q. Well, I will come to that later. By this you intended to have Mr. McKinley take Mr. Stevens, who was in Portland at that time, down to look at the Linn County lands—the lands in suit, did you not? A. Well, yes.

Q. Look at your letter.

A. Is it in this letter? Yes, sir.

Q. Now, a little later down you speak about Goddard. "The best thing for you to do is to get hold of Goddard." Who was Goddard?

A. I believe that is Hi Goddard from La Crosse.

Q. You wanted him to look at those lands with a view of interesting him, did you not?

(Testimony of S. A. D. Puter.)

A. Well, I had forgotten about that, but I presume I did. I have written about it here. I didn't know that I **[768—806]** ever spoke to Goddard about them lands until I saw this letter, but it is in my writing.

Q. You say here "you want to show him 14–2 and 3, also" and "don't offer the tract to no one less than $7.50 per acre." That is this land in suit in this action, isn't it?

A. Yes. It is the only land we had in 14–3.

Q. And that refers to Goddard?

A. Yes, sir. As I say I didn't recollect Goddard in this deal at all; but I have written about it here and forgotten it.

Q. Well, this is 10 years ago; when you made some of these statements recently you had forgotten about this correspondence, had you not? Had you or hadn't you?

A. Well, I had forgotten about the substance. I knew I had corresponded a great deal, but I had forgotten what I had mentioned until I see it.

Q. If you had seen this correspondence when you made your statement to Roosevelt, and made your statement to the Interior Department, would you have made that statement?

A. Well, I don't know. I would have endeavored to make it pretty strong for action anyway. Anybody would.

Q. Well, you don't mean to say that you would intentionally stretch the truth, Mr. Puter?

A. I wanted some action taken. It looked to me like it had to be put up pretty strong to get them to

(Testimony of S. A. D. Puter.)

act. It looked like they wasn't going to do anything. The substance of the statement was true.

Q. Yes, but these facts are true, are they not, these letters—these dates, this correspondence?

A. Oh, yes, Yes, it must be. I had no other object in **[769—807]** writing them at that time.

Q. When you wrote these letters, you did not anticipate any suits 10 years later, did you?

A. Why, of course not.

Q. I now want to call your attention to a letter written on March 8th, which I hand you. It is "Government's Exhibit 105." Lay that aside temporarily. And I will call his attention to a letter of March 6th. I call your attention to "United States Exhibit 103," dated March 6th. What is that?

A. Well, that is a letter from me to McKinley.

Q. To McKinley? A. Yes.

Q. I refer now to the last paragraph on the last page. This letter is written from San Francisco, after you had had some communications over the telephone with him. Now, on the last page you say, "Now, do not forget to look up all the good quarter sections."

A. Hold on till I get the last. There is another page to this.

Q. I will read you. We have it copied in the record. Now, listen to the reading. The other page will turn up later. "Now, do not forget to look up all the good quarter sections that are subject to cancellation, that you can find, for I will want to get a batch of them in order to raise all the money I can for the Linn County tract." What did you mean by

(Testimony of S. A. D. Puter.)

writing to McKinley on March 6th that you wanted him to look up all the good quarter sections that were subject to cancellation?

A. Well, what I meant by that was in regard to lands that could be used for scrip. **[770—808]**

Q. Didn't you mean school lands? A. Yes.

Q. That had lapsed?

A. Yes, school lands.

Q. And get new certificates on school lands that you could pledge yourselves so as to raise money to take care of these claims, if you could not interest Stevens or Goddard?

A. Well, it was either school, lands for sale, or school lands to be used for scrip. We wanted to get money of course. We needed a lot of money.

Q. What did you need money for when you wrote that letter on March 6th?

A. Well, although I had talked to these men, and it was very favorable, we did not always know whether they would come through, you know, and by having a certain amount to advance to help the thing along, we could raise the balance.

Q. So that when you say, "to raise all the money I can for the Linn County tract," you had reference to raising the money for paying the final entry fees on the lands in suit?

A. Well, yes, in relation to those 33 entries, of course.

Q. Now, we will take up the letter of—have you the letter of March 8th before you?

A. Yes, sir. Let me see that letter that you are pinning there, those three pages. Now, beg your

(Testimony of S. A. D. Puter.)

pardon, in relation to that money, what letter was you reading from? Was it from this one?

Q. March 6th. But there is one page lacking, you say, which we will find.

A. Well, that is March 6, 1901. This letter is dated 1901. **[771—809]**

Q. Oh. Well, then, we are all mistaken. It should be stricken from the record then.

A. That is what I noticed. I want to know about that, if I see that page.

Mr. UELAND.—No, this is November 6, 1901.

A. Yes.

Q. (Mr. UELAND.) Not March 6th?

A. November 6th.

Mr. GEARIN.—The other page is undoubtedly here.

A. Now, I will have to go over that to correct that.

Mr. UELAND.—We had a letter of March 6th. That is another letter.

Mr. McCOURT.—This don't want to be stricken from the record. It was probably introduced.

Mr. LIND.—Oh, well, we have got the wrong letter.

COURT.—You have probably got the wrong letter.

Mr. LIND.—Look at your page 183.

Mr. McCOURT.—You handed him the wrong letter. I think there always was the last page missing on this letter.

Mr. LIND.—That is the letter, if you will kindly hand it to him.

(Testimony of S. A. D. Puter.)

Mr. McCOURT.—That is the letter. (Hands witness letter.)

A. Yes, sir. That is right.

Q. Now, again calling your attention to the statement which I read awhile ago, your answers were correct, were they?

A. Yes, sir, for this letter.

Q. The reference to the Linn County land means the lands in suit? A. Yes, sir. **[772—810]**

Q. That refers to procuring cancellations and making deals so as to raise the money for the purpose of taking care of these lands?

A. Yes, sir. I always had in mind that probably my parties would fall down.

Q. I now call your attention to the letter of March 8th, "Government's Exhibit 105," that you have in your hand. A. Yes, sir.

Q. On the second page you say "In case that man Goddard is there, why don't you take him out on 14–2 and 3." Does that refer to the lands in suit? A. Yes, sir.

Q. For what purpose did you want McKinley to take him out, Goddard, to those lands on March 8th?

A. Well, we wanted all the strings we could. Here was another man, a prospective purchaser, that was buying Oregon lands.

Q. I now call your attention to "Government's Exhibit 105." What is that? A. This is 106.

COURT.—This is 105—March 8th.

A. March 8th?

Q. Well, I mean March 9th.

(Testimony of S. A. D. Puter.)

A. Well, that is 106.

Q. Oh, yes, 106, beg your pardon. You state in that there is no use to write to you for money, and also say: "My man from Minneapolis just got here this evening, and we go to Humboldt to-morrow. I also got a telegram from Smith of Minneapolis for to meet him here on the 13th. So now I do not know how I am to do it." Who was the man from Minneapolis that was in San Francisco at that time? Was it Rogers? **[773—811]**

A. I think it was. Well, I can't—

Q. Or was it Bohn? A. What is that?

Q. Who was it?

A. Well, I believe that is in relation to some redwood deal.

Q. But who was the person from Minneapolis referred to, if you remember? Read it over again. Reflect on it again.

A. "My man from Minneapolis just got here this evening, and we go to Humboldt to-morrow. I also got a telegram from Smith of Minneapolis for to meet him here the 13th. Now, I do not know how I am to do it. I wired him that I would. He is the best man I have for that Linn County tract, and I must meet him. His cruiser Mr. Kribs I have been expecting to see ever since I came back here, but he is up in the sugar pine belt."

Q. So at that time you hadn't met Kribs, had you? On this date when you got out to San Francisco?

A. Oh, yes, I had met Mr. Kribs, you know, in February. This is in March.

(Testimony of S. A. D. Puter.)

Q. Yes.

A. I had met Mr. Kribs in February, and when he didn't go to Himboldt County, that was between—on or about—I left Chicago on the 13th, so I must have met him four days afterwards, and I went on to Del Monte Hotel and closed that deal with a man by the name of Peyton—that is the 60 quarter sections—before the first of March.

Q. Did you succeed in disposing of the lands that you had optioned to Smith? A. Yes.

Q. And which Kribs would not examine, to Mr. Peyton? **[774—812]**

A. Yes, at $3.50 an acre.

Q. $3.50 an acre? That was concluded by February?

A. That had to be closed before the first day of March. It was closed on the first day of March.

Q. Now, you say here: "At any rate, I will have to get back here the 13th or 14th, to see Smith, and I presume I will go on to Oregon with him. In case I can get any money at Eureka, I will wire some to you." Now, what was Smith coming out for?

A. Well, I believe Smith was coming on some deal with Mr. Kribs. I had learned through Kribs or I had learned from Smith. It seems that—

Q. Hadn't you commenced to talk redwood to them, to Kribs and to Smith?

A. No, I had not dealt in redwood until after the Oregon deal.

Q. As a matter of fact, Smith was buying sugar pine in California at that time?

A. Yes. I believe this man I have reference to

(Testimony of S. A. D. Puter.)

is a man by the name of Gilchrist, that come out to go to Humboldt County.

Q. Now, we have got it. That is correct, isn't it? That it was Mr. Gilchrist you had in mind there, who was coming out there at that time?

A. Yes, to look at the redwoods.

Q. And had come to look at lands in Humboldt County? A. Yes, sir.

Q. And at the same time that Gilchrist was there, you also received a telegram from C. A. Smith that he was coming out? A. Yes, sir.

Q. Then it occurred to you that he might be a prospective **[775—813]** purchaser for the Linn County tract, didn't it?

A. Well, it occurred to me the first time I had seen him at Minneapolis, as far as that is concerned. I had him in mind all the time.

Q. But isn't it strange that you never mentioned his name in all your correspondence with McKinley until this time, if you had him in mind?

A. Well, no, not strange. I know that I had him in mind, for the reason when I got to San Francisco and talked with Kribs and sized him up and see what sort of a man there was, that they would be both good men to tie on the Oregon deal, the Linn County deal, that I didn't think it would be wasting time to endeavor to sell them the Coos County lands.

Q. The school lands? A. Yes.

Q. Well, now, in regard to Mr. Kribs, had he ever been in Oregon prior to that time?

A. That I don't know.

Q. Did he tell you he had?

(Testimony of S. A. D. Puter.)

A. I hardly think he was. It seems to me he said that he had not been in Oregon. He had asked me about the country up there,—timber.

Q. He was engaged in buying sugar pine in California at that time, negotiating some deals, was he not? A. In California?

Q. Yes. A. Yes, sir.

Q. He had just come out from the East?

A. Well, I don't know how long he had been there, but it was just previously to meeting him.

Q. Did Mr. Kribs tell you that he was familiar with the public land laws or anything of that kind?

A. Oh, in talking with him, I soon learned that he was **[776—814]** pretty well posted in land matters.

Q. Yes, on land matters? A. Yes.

Q. And values? A. Yes.

Q. Did you meet Mr. Smith in San Francisco along about the 13th or 14th?

A. That I cannot say now. I have forgotten about that. I may have, and I may not. I don't recollect.

Q. Did you meet Mr. Kribs about that time? Now, Mr. Puter, during the year, between the first of January, 1900 and the first of June, 1900, did you see Mr. Smith more than twice? One was in February when you signed that contract, and again about the 20th of May.

A. Well, I am positive I met him those two times, and I cannot say whether I did more.

Q. Meet him between those two dates?

A. Between those two dates. It appears to me I

(Testimony of S. A. D. Puter.)

should have met him, but I am not positive now unless I have something to call—jog my memory.

Q. Now, later on?

A. Yes, I know I met him. I met him—I went back East again.

Q. When did you go back East?

A. I am pretty sure I made another trip right back. I think I went back in March.

Q. Yes. I will give you the date.

A. Because I went back in March, I know, and I met Mr. Smith. That is when I spoke to him about the Linn County deal. And he sent me then again to Kribs, and I had quite a conversation with him.

Q. Quite a conversation with whom?

A. Mr. Smith. **[777—815]**

Q. About the Linn County tract?

A. Yes, sir.

Q. I call your attention to "Government's Exhibit 108," your letter dated March 24th from Appleton, Wisconsin. You say: "I will leave Chicago Monday eve for San Francisco, where Kribs will join me and go to Albany." That is the occasion you say you had some conversation with Mr. C. A. Smith in regard to those Linn County lands?

A. When I closed the deal with Mr. Peyton on the first of March, I went right back to Appleton, so I was in Appleton there the 7th or 8th.

Q. You say you closed the deal. What sort of a deal did you close?

A. Well, Mr. Peyton had put up the $15,000 with Baldwin and took over the 60 quarter sections of land with six minths' option to purchase them.

(Testimony of S. A. D. Puter.)

So I went back. There was a certain amount of that money coming to me, and on that occasion I called on Smith, and I think I called on him twice. And I spoke to him about as we had fell down on the Coos County lands, I had some 8,000 or 9,000 acres of land in Oregon; that I would like to *have him.*

Q. Now, as a matter of fact, Puter, isn't that the first time that you ever brought up the matter of these Linn County lands, the lands in suit, to C. A. Smith?

A. Well, I think it is now, since I have examined this correspondence. I am pretty sure of that.

Q. And then he said, or you write McKinley: "I expect to fix up a deal here today with Baldwin," and then "will leave Chicago Monday evening for San Francisco, where Kribs will join me and go to Albany." The **[778—816]** understanding was that Kribs would go with you to Albany and look at these lands? A. Yes, sir.

Q. You interested Mr. Smith to that extent, that he would have Kribs go and look at them?

A. Yes, sir.

Q. And if Kribs reported that they were all right, he would put up the money? A. Yes, sir.

Q. Now, in that conversation, did you tell Mr. Smith that these were fraudulent entries that you had procured these men to go and make locations for you? A. Of course not.

Q. How?

A. Well, I should say not. You wouldn't think—

Q. No. You assured him that these lands were

(Testimony of S. A. D. Puter.)

good, and the titles were all right, did you not?

A. Well, the matter of titles did not come up. I simply told him I had 8,000 or 9,000 acres of timber land that would go 75,000 feet per acre in Linn County; that I could give him in a solid body.

Q. You wanted him to send Kribs up there to look at them?

A. And he said he would be glad to take them at the price I gave him—I think it was $6.00—and that whatever trade I made with Mr. Kribs that he would stand by.

Q. Then, it is pursuant to that arrangement that Mr. Kribs went up on the first of April or about the first of April?

A. Well, whenever—yes it was whatever time it was—I don't recollect now. **[779—817]**

Q. Well, the record shows that Mr. Kribs was there about the first of April and you also.

A. Well, I presume it was.

Q. Then you didn't see Mr. Smith again until the latter part of May, did you, the 20th of May?

A. Well, as I state here my best recollections is that I seen Smith twice in March, because I was in the east most of that month.

Q. But that would have been a physical impossibility for you to see him twice in March, wouldn't it?

A. Oh, no. I think I went direct to Appleton to close the deal there with Baldwin, about the 7th or 8th or 9th,—went over to see Mr. Smith, and probably saw him just before I left for the coast again,

(Testimony of S. A. D. Puter.)

the latter part of the month. I may have and may not, but I am inclined to think I met him twice.

Q. Well, you remember his coming out in May?

A. Well, I don't recollect the month. I always thought in my mind that it was before that time. I know he came out and went on to the land with me, whatever date that was—I have forgotten.

Mr. LIND.—Well, it is conceded that it was about the 20th of May, was it not?

Mr. McCOURT.—The Revere House shows him at Albany on the 21st of May, 1900.

Q. Yes, you and Mr. Smith and Kribs were registered at the Revere House at Albany on May 21st?

Mr. McCOURT.—And W. R. Mealey.

Q. And W. R. Mealey was there registered at the same time.

A. Does the register show that?

Q. Yes. **[780—818]**

A. Well, of course—

Q. Well, that is the time. And then you and Mr. Smith went up, as you testified yesterday, to look at the lands in suit here?

A. Well, it was at the time I met him at Albany we went on the lands, if that was on the 21st of May.

Q. That is the only occasion, that one occasion, that you went up there? A. Yes, sir.

Q. Now, at that time, when did you first broach the redwood land proposition to him? Was that on that trip?

A. It seems to me it was a little later. He was here, and Mr. Kribs was out here with his wife.

(Testimony of S. A. D. Puter.)

Q. Let me refresh your memory a little. When Mr. Smith was shown this land in controversy, he thought it was pretty nice, didn't he—those yellow firs—the first he had ever seen? A. Oh, yes.

Q. Didn't you tell him that you would show him a great deal better than that very shortly if you could get him interested? A. No.

Q. You would show him redwoods twice as nice?

A. Oh, no. I coaxed him over on a fishing trip. I never let him know what I was going to show him over there, until I got him over there.

Q. Well, now, as a matter of fact, didn't you go right from there on the fishing trip, and to look at the redwoods? I call your attention to your original redwood contract with Mr. Smith.

A. Well, that would tell exactly. That is the 31st of May. This was signed where? **[781—819]**

Q. Signed in San Francisco, wasn't it?

Mr. UELAND.—Or at Eureka, maybe.

Q. Or, no, at Eureka, I guess.

A. Yes. It was the 21st day of May we met, and this is the 31st of May. Well, I see now it must have been just at that date, or right after coming out from the tract of timber in Linn County that I took him to Humboldt. It must have been.

Q. And that is the trip, and the fishing trip, and the occasion that he visited at your house, which he refers to with appreciation in his correspondence that is read this morning? A. Yes, sir.

(Testimony of S. A. D. Puter.)

COURT.—It is now the noon hour. We will take a recess until 2 o'clock.

Whereupon proceedings were adjourned until 2 P. M. **[782—820]**

Portland Oregon, May 4, 1910, 2 P. M.

S. A. D. PUTER resumes the stand.

Cross-examination (Continued).

Mr. UELAND.—May it please the Court, I produce and hand to the District Attorney the memorandum referred to in the colloquy during the morning session.

Mr. LIND.—As a part of the cross-examination, if you have no objection, I will introduce that letter.

Mr.McCOURT.—Very well.

Mr. LIND.—This, your Honor, is the letter of March 5th to Mr. Puter, which was referred to in his testimony. It is simply offered for the purpose of showing his physical whereabouts and movements.

Marked Defendants' Exhibit "M."

Q. Mr. Puter, in your direct examination on yesterday you were asked in regard to a deposit that you made at Roseburg on April 19, 1900. I notice in the Government Exhibit 190, received in evidence this morning, being a certified statement from the Roseburg bank, this statement which I will read you: "Sources of deposits of S. A. D. Puter, remittance sheets. To First National Bank of Portland, April 19, 1900; dated April 12, 1900; No. 1514; drawn by Cashier; on Wells Fargo Bank—endorsed by S. A. D. Puter; amount $400." Also "To First National Bank of Portland; April 19, 1900; dated April 12,

(Testimony of S. A. D. Puter.)

1900; drawn by and on Wells Fargo Bank of Portland; endorsed by S. A. D. Puter; amount $4,000." Does this refresh your memory at to the derivation of those funds?

A. You said of Portland. This is First National Bank of Roseburg. **[783—821]**

Mr. McCOURT.—That is where it was deposited.

Mr. LIND.—It was drawn on Portland.

A. On the Wells-Fargo's Bank.

Q. Yes.

A. But you mentioned the First National Bank of Portland.

Q. Well, it is drawn through the First National, apparently, but on the Wells-Fargo.

A. Oh, yes, yes, I understand.

Q. I simply observe those memoranda there. Now, I want to know whether that aids you?

A. What is that?

Q. Whether that aids you in determining or recollecting where those moneys came from.

A. Well, I think now that that was my own money, deposited in the Wells-Fargo's Bank, because I had received several thousand dollars in March from Mr. Baldwin, and I think I must have deposited it in the Wells-Fargo's Bank, because I always done business at that bank here in Portland. Their books would show that.

Mr. McCOURT.—Mr. Lind, we had those accounts examined at Wells-Fargo's, and there was no $4,000 drawn from his account at that time, or any account he had.

(Testimony of S. A. D. Puter.)

Q. Now, let me ask you this: Had you or had you not made arrangements with some person connected with the Wells-Fargo Bank—I cannot suggest the name, because I do not know it—to finance these final proofs for you, or partly so, in the event that you secured no one else?

A. Oh, no. I don't recollect of getting money from anybody, only from Kribs and my own account, and probably some money from McKinley. I don't know whether I got it from him or not. **[784—822]**

Q. Well, this money you didn't receive from Kribs or through him, did you? The name I have in mind was Dooley. Hadn't you had conversations with Dooley, and made partial arrangements with him to help you finance these final proofs in case that you should be short of funds yourself, before you did so with Kribs?

A. I recollect Mr. Dooley very well, and I was very intimately acquainted, but I don't know now whether I had or not. Mr. Dooley was cashier of the bank, and of course he always done business on a business basis, and wanted security, etc. I don't think that he—I might have talked to him; I don't recollect now though. I know the man very well, and I am pretty sure that I had got some money from Fred Kribs just a day or two before the proofs were made, or at the time the proofs were made, or the day afterward, before he got the deeds.

Q. Well, that we know, but—

A. And I am equally sure now, since those dates has all come back, that I had made the trade with

(Testimony of S. A. D. Puter.)

Baldwin, and I come into possession of several thousand dollars from him, and as I done business with Wells-Fargo Bank, most undoubtedly I deposited that money there, and it ought to show it, and if I had an account there I would have used it as far as it would go on those lands.

Q. It appears by the correspondence, and your testimony also, that you concluded to deal with Peyton for those school lands about the first of March?

A. Yes.

Q. Did you get any money from Peyton?

A. No.

Q. In addition to taking up the Baldwin pledge?

A. No. He advanced the $15,000 to Baldwin, but I got a **[785—823]** part of that.

Q. You got a part of the Baldwin money?

A. Yes.

Q. On another deal?

A. Well, yes, I got it on another deal. The understanding was if Baldwin would get his money out of this that he would put up a certain amount on another deal, which I closed immediately with Baldwin at that time, and I think netted me four or five thousand dollars.

Q. Do you know a woman residing at Albany in 1900 by the name of Beeman? A. Yes, sir.

Q. Were you acquainted with her in 1900?

A. Yes, sir.

Q. Did you solicit her to make one of these entries?

A. Well, she was introduced to me by some one,

(Testimony of S. A. D. Puter.)

and I believe it was McKinley,—I don't know of anybody else—or Tarpley. And I think she talked to me about taking up the claim. She already had spoken to the other party about it, and talked with her about it and told her what there was in it for her.

Q. Did you ever pay her any money?

A. Yes, sir.

Q. How much? A. $100.

Q. Did you pay her any amount besides that?

A. No, unless it was I might have paid her—it seems that there was two women, another one, an acquaintance of hers, that also took up a claim. I may have paid her for the two, $100 each. She may have collected for the other lady. That I don't recollect. But I do recollect paying this woman for her deed, in Albany, $100, or in Portland here—somewheres. **[786—824]**

Redirect Examination.

Q. When you went down to Humboldt in the latter part of May did McKinley go along?

A. No, sir.

Q. He was not on that trip. Did McKinley ever go up to Humboldt with you and Smith on the boat?

A. Well, yes, I believe McKinley went—I don't know whether Smith was along or not—but McKinley went there just on a pleasure trip; no bsuiness.

Q. Well, wasn't that the trip when you took Smith fishing?

A. No. I went with him by vehicle from Grant's Pass, with Mr. Kribs and his wife, and myself and my wife, and Mr. Smith went all the ways down to Eureka, and then took the steamer to 'Frisco.

(Testimony of S. A. D. Puter.)

Q. Were you at Albany when McKinley was arrested there? A. Yes, sir.

Q. The first of April?

A. I was on my way to Portland from 'Frisco.

Q. Did you stop off there at Albany?

A. Yes, sir.

Q. Did the fact of Mac's arrest create much consternation? A. What is that?

Q. I say did that create much consternation in your camp, as it were?

A. Well, I understood the situation myself, what it was for, and it didn't scare me very much, because I thought I had pretty good standing, and didn't anticipate very much trouble at the time.

Q. You calculated that your standing with the attorney for the Northern Pacific was such that you could effect at least a settlement?

A. Well, yes. He had been my partner in deals, and his [787—825] brother was Deputy Prosecuting Attorney.

Q. You refer to Pierce Mays?

A. Yes. And I concluded it was a sort of a trick on the Northern Pacific.

Q. When Kribs was down there in California, did you see him while he was there buying sugar pine timber?

A. Well, I must have met him at the time, when he first went there, he was dealing in timber then.

Q. Whom was he buying the sugar pine for?

A. I presume it was Mr. Smith.

Q. C. A. Smith? A. Yes.

Q. You were examined this morning relative to

(Testimony of S. A. D. Puter.)

some Burns affidavits—what they commonly call Burns affidavits—and you spoke of a man by the name of Allie Houser. Did that party have anything to do with any of these claims—these 33 claims?

A. Well, it seems to me he has. I don't know, let's see. It was one of the 33 claims.

Q. Which one of them?

A. Well, he took what was known as the Josephine Jacobs claim. She was one of the original entrymen, but it seems that when she made an affidavit for Loomis her right age was discovered. At the time she made the filing she was asked if she was of age, and she said yes, but in making the affidavit she told her exact age, which was under 21 years of age at the time she filed, and even at the time the affidavit was made; and the Department, they noticed that, and consequently held her entry for cancellation. As soon as I found that out, I had conveyed that idea to Mr. Kribs, and procured her relinquishment, and Allie Houser filed on the claim.

Q. On the same claim? **[788—826]**

A. Yes, sir.

Q. Now, you knew the facts in relation to that claim? A. Yes, sir.

Q. Did you attempt to have Allie Houser make any affidavit that was not true?

Mr. LIND.—Wait a moment. That, your Honor, is immaterial, and a subsequent matter, and not involved in this suit in any way.

COURT.—It is a matter about which he testified on cross-examination. I suppose the District Attor-

(Testimony of S. A. D. Puter.)

ney may go into a fuller explanation of his testimony.

Mr. McCOURT.—There was an attempt made to show coercion in making the affidavit regardless of the truth.

Q. I will ask you whether or not you attempted, or did have Mr. Houser make any affidavit to matters that were not true? A. No, sir.

Q. Did you hear him make his affidavit before Mr. Burns? A. Yes, sir.

Q. Was it true?

A. Yes, sir, to the best of my knowledge it was.

Q. And were you present when the other entrymen involved in the case made affidavit?

A. You mean that Josephine Jacobs?

Q. No. The other entrymen who made affidavits before Burns.

A. Oh. Well, I believe I was for three or four or five of them. I was in the room or in the adjoining room.

Q. Now, this man Andy Nicholls, who made an affidavit there at the same time—did he make it at the same time Houser did?

A. Well, within probably a day or two before or a day or two afterwards. **[789—827]**

Q. Now then, after Andy Nicholla and Houser had made their affidavits, what was the action of these others parties who later made affidavits? What did they do as to making statements to Burns?

A. Well, as soon as they found out that Allie Houser and Andy Nicholls had made affidavits and was granted immunity, they all come there and

(Testimony of S. A. D. Puter.)
wanted to rush in and do likewise; and they did.

Q. And those that you heard make affidavits, did they tell the truth, or tell something that was not true?

A. Well, as far as I know, they told the exact truth. That is, they stated—I have not seen the affidavits, but I understood that they had made affidavits that they had taken up this land for McKinley and Puter and Kribs, understanding that they would receive $100 for it. I have never seen the affidavits, but I understood that was the sum and substance of their affidavit.

Q. Well, was that so? A. What is that?

Q. Was that true?

A. Just as I stated that the contract was with McKinley and I, to pay them $100, and to convey that idea to them, although I had never talked to any one of them about the situation; but it seems that they were willing to make deeds and take their $100.

Q. Well, what I was trying to get at, Mr. Puter, was whether or not either yourself or Mr. Burns frightened those people into making an affidavit of that character which was not the truth?

A. Well, I didn't frighten anyone, as far as that is concerned. It seems that this man, when I started in with this man Nicholls, it seems that Burns had him in hand for **[790—828]** two or three hours, and kicked him out of the room, and he come to me and shook hands with me, and said he knew me, that he met me at the Land Office. I didn't recollect the man, but he said he knew me. I went after him, took him in a corner—I didn't know anything about

(Testimony of S. A. D. Puter.)

his claim. I asked him if he took it up fraudulently, and I hammered at him until he said, "I will confess —tell the truth—provided I am granted immunity." I says, "All right. Come in." And he went in and told the story to Burns right in my presence. So far as his claim taking up, I didn't know anything about it.

Q. Only what he told you?

A. What he told right there under oath before Burns.

Q. That Andy Nicholls claim, however, didn't relate to your 33 entries?

A. No, had nothing to do with it.

Q. That was in the Oregon City Land District, wasn't it? A. Yes, sir.

Q. Was Mr. Kribs making affidavits there while you were there? A. What?

Q. Was Mr. Kribs there making affidavits while you were there? A. Yes, sir.

Q. Were you the man that had Kribs go there to Mr. Burns? A. Yes, sir.

Q. You talked to him beforehand?

A. Yes, sir.

Q. Did you coerce or frighten Mr. Kribs into making any affidavits?

A. No, sir, I should say not. I don't think he is a man could be frightened. But I went to him and told him that **[791—829]** all of these people had come in and made affidavits, and that I thought the best thing he could do was to do likewise.

Q. Did he adopt your suggestion?

A. Yes, sir.

(Testimony of S. A. D. Puter.)

Q. Were you present when he made his statements? A. Yes, sir.

Q. Was he threatened? A. No, not at all.

Q. And coerced by Mr. Burns, or anybody else?

A. No, not to my knowledge.

Q. Did he exercise considerable care in making his statements?

A. Well, yes. He made several statements. It seems the first statement he made was not satisfactory to Burns, and also myself, and he made another one, and finally made another one, and a little stronger, until it was accepted.

Q. Until you got the truth out of him?

A. Yes, sir, as far as I know.

Q. Those statements he did make were verified, were *the* not, by his own checks and memoranda of payments? A. Yes, sir.

Q. Now, you speak, Mr. Puter, of wanting to get action on these cases. I want to ask you if that was an action that you wanted to get out of mere spite, or because you thought the facts warranted the action which you were requesting to be taken?

A. Well, I considered that Mr. Smith had done me a very bad injury in treating me the way he did; and I thought there was a chance to retaliate, and I went after him as hard as I could on this proposition.

Q. That is at the time you mean in 1905? **[792—830]**

A. Well, it was from the very time of the redwood deal.

Q. But you are referring now to the time you got $10,000 from him?

(Testimony of S. A. D. Puter.)

A. Well, up to that time I hadn't got the ten thousand.

Q. No, but let me understand you. The threat of criminal prosecution that you made to Smith through Kribs was in regard to these 33 claims? That is what you were talking about to him then?

A. Yes.

Q. And the $10,000 you wanted to get was what you deemed was due you on the redwood lands?

A. Yes, sir.

Q. But now later in 1908, say, and since this case was commenced, the action that you spoke of attempting to get then, was that still done out of spite, or because you thought—

A. No, I shook hands over the matter, and everything was wiped off the slate. I give him back his letters and everything. But when I was supposed to be a fugitive from justice, and he thought that I would never be seen again, he came out and he wrote the most contemptible piece about me, and published it in the "Minneapolis Journal," and I seen that five days afterwards, and I thought he shouldn't do anything like that, because it was a lie from the top to the bottom, and I went after him on that account more than anything else. If it wasn't for that, I would never have mentioned this.

Q. But you don't get my idea. What I wanted to know is whether or not you wanted the Department of Justice to commence these cases out of spite, or because you thought the facts of the cases warranted the action to set aside the claims? **[793—831]**

(Testimony of S. A. D. Puter.)

A. Well, it was out of spite a good deal. I had it in for Smith, and I thought there was a chance there, and in order to get action, I went at it pretty strong, a little stronger than maybe I should have.

Q. A little overstated the facts?

A. I think if I had went at it a little stronger, I would have had action before this.

Q. Well, now, you want the Court to understand now that in your book there and to me, and to the Departments generally, you a little overstated the facts?

A. Well, I have to a certain extent.

Q. And now, on your oath, you have stated them just about as they actually occurred?

A. Yes, sir.

Q. As near as you can remember it at this time?

A. Yes, as near as I can remember.

Q. Now, then, this reluctance that appears here, has that anything to do with some little trouble that you are at present having in Wisconsin?

A. What is that?

Q. I say, your apparent reluctance upon the stand now as compared with formerly, has that anything to do with some little trouble that you are having in Wisconsin at the present time?

A. It has nothing to do with this case that I know of.

Q. Not at all? A. Not at all, sir.

Q. That reluctance is not due to any fear that you have of any result that might occur in Wisconsin? A. No, sir.

Q. But you are making a *bona fide* attempt to

(Testimony of S. A. D. Puter.)

tell the thing just as you recall it? [794—832]

A. Yes, sir.

Q. At this time?

A. I don't know what trouble I have in Wisconsin that I would be afraid of, that I know of.

Q. Well, of course, I refer to the Salzer matter.

A. Yes, well—

Q. Now, I understand you, in regard to those affidavits, that when Burns was doing all this cussing, and all that kind of thing, nobody made affidavits; it was after he quit cussing that they came in and made the affidavits? A. Yes, sir.

Q. And after you had kind of interested yourself in the matter, and a man who knew the situation had become active in the transaction?

A. After Nicholls and Houser came in, then the rest of them all come.

Q. Without any coercion or anything else?

A. Yes.

Q. Without any invitation except from you?

A. Well, only from Nicholls, I think, and Houser.

Q. Nicholls and Houser?

A. Yes. They advised it.

Recross-examination.

Q. Mr. Puter, when the storm was over and these fellows came in, they came in under an understanding that they would have immunity if they signed up?

A. Yes, sir, if they told the facts in the case they would be granted immunity.

Q. Now, that was true of Kribs too, was it not?

A. Yes, sir.

(Testimony of S. A. D. Puter.)

Q. Wasn't it also suggested that if he would sign those statements there would be no civil action in regard to **[795—833]** these lands?

Mr. McCOURT.—I object to that as immaterial, for the reason that the District Attorney had no authority to grant any such immunity.

Mr. LIND.—I concede that.

COURT.—Kribs' affidavit has been offered by the government in this case.

Mr. McCOURT.—Yes.

COURT.—I suppose the defendants have a right to know the circumstances under which it was made.

(Question read.)

A. Well, I believe that that was the understanding.

Q. Wasn't that understood between him and Heney, and in the presence of yourself and Burns also?

A. No, it was not. I heard that, but it was not in the presence of—it was generally understood, I think. I spoke to Heney about it once, and I believe he said that he had nothing to do with the prosecutions of civil suits—it was only criminal cases. And I am inclined to think that that idea was conveyed to Kribs, that there was not to be any prosecutions.

Mr. McCOURT.—Just a moment now. Did you know anything about that yourself?

A. Well, I had heard it around the rooms there some way. I think I heard it from Heney. I spoke to Heney once or twice about it, and although he didn't say very much, but I understood that Kribs

(Testimony of S. A. D. Puter.)

was given to understand that there wouldn't be any prosecution.

Q. You rather intimated in your answers to the District Attorney's questions that spite had some influence with you in making these statements to the Interior Department, to **[796—834]** which reference has been made. I will ask you if there isn't another influence. Didn't you want to make some money relocating these claims in the event that they were involved in litigation?

A. No, no. I didn't attempt that, and never thought of it, because I could not do it if I tried. There is no way that a man can do it. They are patented lands. You can't squat on there—you are a trespasser.

Q. Well, now, let me ask you, Mr. Puter, although the Houser claim was patented, didn't you—

A. No, sir.

Q. File a contest against it?

A. Oh, no. That claim is not patented, sir, and I filed the contest within the statute that contests should be filed, and it is not patented yet.

Q. And that contest is pending now?

A. Yes, sir.

Q. And you have filed an affidavit that you intend to take it as a homestead entry?

A. Yes, sir.

Q. Yourself. Well, didn't you locate some people on the lands in suit?

A. Not a single person.

Q. Well, I have been so informed. That is why I ask.

(Testimony of S. A. D. Puter.)

A. No, sir, not a single person have I located, or taken a cent from to defend them in a contest, or anything, on any of those 33 claims.

Redirect Examination.

Q. That matter of the civil action, wasn't it a fact that Mr. Kribs, in your presence there, was continually, during the time he was making statements or about to make them, endeavoring to exact from Heney a promise that he would [797—835] not be prosecuted civilly for these lands?

A. Yes.

Q. And that Mr. Heney always, so far as you know, or in your presence, refused to make any such promise or concession?

A. I believe that that was the principal reason that Mr. Kribs made that confession, and I understood it that he was always harping about whether there would be any prosecutions on the land, etc., if he would come through with documentary evidence that would convict Mitchell, etc.

Q. Well, I say, didn't Mr. Heney, in your presence, always state to Mr. Kribs that he had no jurisdiction over that matter of the civil suits, and that he could not give him any promise in regard to them?

A. Well, Heney would not say very much; but, as I say, I had heard it said in the room there, and I think that Kribs told me, that that was the understanding, and I had got it from other people that was in the deal. I think my brother—I am pretty sure my brother told me.

Q. Was your brother there at the time?

(Testimony of S. A. D. Puter.)

A. He was here at the same time that the understanding was that Heney hadn't anything to do with that, and that he would not urge any prosecutions, and the chances were that that would be dropped, there wouldn't be anything to it. That was generally understood.

Q. That was the arrangement, that Heney would not urge the prosecution, and in that manner it might pass over the time?

A. Well, it was generally understood that there would not be any prosecutions on the land.

Q. Well, you recall that, when these suits were started, Mr. Kribs made a charge of that kind?

A. What is that? **[798—836]**

Q. I say you recall that, after these cases were started, Mr. Kribs stated that he had received such a promise, to somebody; that is, he circulated that report?

A. After the suit was started?

Q. Yes, after these suits were started.

A. No, I didn't hear that.

Q. Don't you remember that I consulted you about it?

A. Well, I have forgotten that. Maybe you did.

Q. And that you stated to me that Mr. Heney had never made any such promise, but that somebody had sort of given Kribs to understand that the thing might be overlooked?

A. Well, I will tell you, I have endeavored all the time to get Heney to start those suits; but he give me to understand that he didn't want to have anything to do with it, and that looked to me as if he had

(Testimony of S. A. D. Puter.)

partially promised that he would not. I kept at him all the time until the suits was started; and I think I was the one that got them started. They wouldn't have been started if it hadn't been for me.

Q. You called my attention to them first, didn't you? A. Yes, sir.

Q. And don't you recall that you stated to me, after these suits were started, that you asked Mr. Heney about it, and he told you that no promise had been made to Kribs?

A. Well, probably I did, if you say I did. I have forgotten about talking to you. I would not dispute you, your memory maybe is a little better than mine.

Q. You remember going to San Francisco several times shortly after the suits were started, don't you? A. Yes, sir.

Q. Talking to Mr. Heney? A. Yes, sir.

Witness excused. **[799—837]**

Mr. McCOURT.—Does counsel know whether or not the question I asked Mr. Sheridan yesterday morning as to the designation of those checks, whether or not it is correct as stated, that checks on Account No. 1 carried no number, and on No. 2 carried the designation of No. 2.

Mr. LIND.—That I cannot answer. But here is Mr. Kribs. He can answer that. Ask him.

Mr. McCOURT.—I just wanted to know, so it might be shown whether or not those two accounts that were carried at Roseburg, checks on account No. 1 carried no designation of a number, and those on No. 2, carried the designation No. 2.

Mr. KRIBS.—I don't know of their numbers, but they are separate and entirely apart, and nothing to do with anything here.

Q. The two accounts?

Mr. KRIBS.—The two accounts are entirely separate.

Mr. McCOURT.—When you drew a check on No. 2 or No. 1, how did the bank know which it was on?

Mr. KRIBS.—I don't know if I had any numbers on or not. I can't remember. For instance, check No. 1, don't know whether I marked it or not. I know they were not always marked.

[Certain Proceedings Re Testimony, etc.]

Mr. McCOURT.—That, if the Court please, is all the evidence the Government has, with the exception that, possibly on this trip to Minnesota, we may want to take the testimony of Charles L. Trabert.

Mr. UELAND.—We would like to ask the District Attorney whether he intends to introduce further testimony in support of the charges in the bill of conspiracy. **[800—848]**

Mr. McCOURT.—What do you mean by conspiracy?

Mr. UELAND.—Well, the conspiracy charged in the bill in connection with the entries charged on the defendants that we represent.

Mr. McCOURT.—No, I do not intend to give any further proof of that than I have given already with the exception of I might want to show further knowledge of Mr. Smith, by the testimony of Mr. Trabert, or some further matters in connection with the relations existing between Mr. Kribs and Mr. Smith, and the communications between them.

Mr. UELAND.—That would be upon the subject of notice; but my inquiry is whether the District Attorney intends to offer any further proof in support of the charges against the defendants we represent, that they entered into a conspiracy to have these entries made at the start.

Mr. McCOURT.—No, I do not. I concede that most of the filings, at least, were made before any negotiations were entered into connecting the defendants Kribs and Smith with the transaction.

Mr. UELAND.—Upon that statement, if the Court please, each of the defendants that we represent in this suit 3320, in order that it may not be implied that they consent that evidence which has been offered and introduced in the case upon the theory of an existing conspiracy, should be taken as evidence against them, they move that that evidence be stricken out of the record as against them. In connection with the statement of the District Attorney, it appears now, not only [801—849] that the conspiracy charged is not proven, but its existence has been negatived by oral testimony, and by contemporaneous writings, conclusively, so that it must appear and come conclusively to the Court at this time—it seems to me the District Attorney should admit it—that neither Mr. Smith nor Mr. Kribs had anything whatsoever to do with the lands in controversy, as far as Mr. Kribs is concerned not until early in April, as far as Mr. Smith is concerned not until May 20th, while the latest entry was as early as February 26th. It seems to me that the District Attorney must concede, and I think will concede, that, not only has the conspiracy charged not been proven,

but its existence has been absolutely negatived in the manner that I have stated.

COURT.—Well, I would not want as at present advised, to sustain the motion to strike this from the record, because it is a negative proceeding, and ought to be submitted when the case is submitted, and your objection will save that question for you until the final hearing.

Mr. McCOURT.—I apprehend that the pleadings are sufficiently broad so that any little matter there where the proof does not entirely conform to the pleadings, the pleadings will be made to conform to the proof. As I recall the pleadings, they are sufficiently broad to cover both phases of the case, either in the original conspiracy, or later.

Mr. UELAND.—The ruling of the Court, as I understand it then, will warrant this interpretation, that **[802—850]** we shall not be deemed to have assented to that evidence being in the record as against us.

COURT.—Yes, very well.

Mr. UELAND.—And that we have an exception if it should be used as evidence against us.

COURT.—Very well. That is understood. Has the defense any witnesses they desire to call now?

Mr. LIND.—We expect, your Honor, that Mr. Kribs will be called probably as the next witness. There are some little matters that I would like to go over with him and Senator Gearin. Now, I dislike very much to ask the indulgence of the Court, but if the case could go over until to-morrow morning, we will have everything in readiness so that we can conclude—I feel confident that we will conclude our side

of the case on to-morrow. Of course I cannot judge of the Government's cross-examination, but my judgment will be that there will be no difficulty in getting through to-morrow. And we would be perfectly willing, if the Court would stand the strain, to have Court open at nine in the morning, or half past.

COURT.—Very well.

Mr. McCOURT.—If the Court please, I have two or three affidavits in that 3319 case that I would like to introduce, by Mr. Rittenhouse, one at least, made by the Mealey brothers; and I want to let Mr. Rittenhouse go home, if I could. No, I won't either—I will keep him here till I finish.

COURT.—Very well then. The Court will adjourn until to-morrow morning at 9 o'clock.

Adjourned until May 5th, at 9 A. M. **[803—851]**

[Proceedings Had May 5, 1910.]

Portland, Oregon, May 4, 1910. 9:30 A. M.

Mr. McCOURT.—I want to place in the record the stipulation which has been entered in by counsel relative to the Northern Pacific contest.

Marked "U. S. Exhibit 189."

Mr. McCOURT.—I also wish to put in the record the statement of the bank account showing deposits and amounts of checks, the bank account mentioned being the account of Fred A. Kribs in the First National Bank of Roseburg, Oregon, also showing the drafts which made up the account, their dates and other material matters which are explained by the statement itself.

Mr. LIND.—There are also some references to Puter's bank account.

Mr. McCOURT.—I believe that is so. Also extracts from the account of J. H. Booth, Receiver, and showing the deposits and checks of S. A. D. Puter in the same bank, and J. H. Booth as Receiver, in the same bank. This may be considered in both cases as it covers in both cases.

Marked "U. S. Exhibit 190."

Mr. McCOURT.—Counsel stated the other day that the words "C. A. S." on the stub of that Stratford check might be explained by Mr. Kribs.

Mr. LIND.—That will be explained; so far as I know "C. A. S." stands for C. A. Smith.

Mr. McCOURT.—I would like to have it admitted so as to save you the necessity of endeavoring to prove handwriting.

Mr. LIND.—There is no question. "C. A. S." as I recall it is merely a pencil memo.

Mr. McCOURT.—There is one on the Stratford check, "C. A. S." in ink.

Mr. LIND.—It is no part of the check.

Mr. McCOURT.—On the stub offered with the check. **[804—765]**

Mr. McCOURT.—We would like to be furnished with the correspondence between Mr. Smith and Mr. Kribs from April 1900, following, relative to the entries in this case.

Also the original contract or a duplicate of it, between Mr. Kribs and Mr. Smith entered into about January, 1900, relative to the purchase of lands in Oregon.

Mr. UELAND.—We have been informed by our clients that they had no written contract between Mr. Smith and Mr. Kribs during that period, and relating to the lands in question here, and we have

no such contract.

Mr. McCOURT.—Mr. Kribs testified in some case here that he did have a written contract.

Mr. LIND.—He did later on; not at the time. My recollection is it was about the 31st of December, 1900, that there was a written contract—some time in December, 1900.

Mr. UELAND.—1901.

Mr. LIND.—My associate's recollection is better than mine on that point.

Mr. McCOURT.—There are some checks that I wish to call for. I will call for them generally as checks to O. J. and Judd Mealey or the Mealey brothers or either of them, or to John A. Thompson, from April 17, 1900, to and including December, 1902. All checks of Mr. Kribs to these parties during that time.

Now, then, will it be admitted without the necessity of my calling witnesses, that there were commencing in February, 1901, up to and after the issuance of patents, certain payments made to Pierce Mays or to the firm of Carey and Mays, and the firm of Mitchell and Tanner—sums of money aggregating $50 per claim to the firm of Carey and Mays and Pierce Mays, and $25 per claim to Mitchell and Tanner upon **[805—625½]** the land embraced in this case, for the purpose of facilitating the passage of the entries to patent.

Mr. LIND.—We will look into the matter and at two o'clock will be advised as to facts in regard to the matter, and ff the facts are as you state, we will so agree, subject, of course, to all objections as to competency and materiality.

Mr. McCOURT.—I want to include in these payments a payment of $100 or more to John Van Zant in connection with the Mitchell and Tanner payment.

Now, there is certificate from the Roseburg Bank being prepared. That will be used in this case.

Mr. LIND.—That will be admitted.

Recess taken until 2 P. M. **[806—625a]**

Mr. McCOURT.—Now, if the Court please, those deeds, for the purpose of showing title have not been proved in the manner required by the statute. I have the copies of the record. I ask whether counsel will admit those are the deeds by which title passed to the Linn & Lane Timber Company, so it won't be necessary to offer the record.

Mr. UELAND.—Surely.

Mr. McCOURT.—Those deeds may be considered, so far as it may be necessary to have them in the record, for the purpose of showing the chain of title as well as the other matters that we claim for them.

Mr. UELAND.—Yes. I take it, of course, for granted, not only in this instance but throughout, if no objection is raised, the document proves what it purports to show.

Mr. McCOURT.—Yes, but I had not offered it for the other purpose, and possibly could not unless admitted.

Mr. LIND.—May I ask the District Attorney a question at this point: The three deeds—the Swanson deed, and the Werner deed, and the deed from C. A. Smith and wife to Linn & Lane Timber Company are in evidence, are they not, generally, for any and all purposes?

Mr. McCOURT.—I suppose they are now, yes. I am willing that they may be considered for all purposes.

Mr. UELAND.—I call your attention to the fact that the Swanson deed does not cover any of the lands in this suit, and whether you care to have it in evidence in this suit. **[807—531]**

Mr. McCOURT.—I thought maybe you wanted them for some purpose. I had them in there to use as comparison with the other deeds merely. But if there is any other purpose, they may serve, for the purpose of argument or otherwise, I am willing that they be there.

Mr. GEARIN.—They may be considered in for all purposes?

COURT.—They may be considered in for all purposes.

Mr. McCOURT.—Now, if the Court please, while it is admitted that the Linn & Lane Timber Company is a corporation, I think possibly that Fred A. Kribs was held out as its agent, or rather had received the official authority to act as its attorney in fact, I wish the record to show that the Articles of Incorporation of the company contain this provision in Article IV: "The management of the corporation shall be vested in a Board of Directors consisting of three persons, who shall elect from their own number a president and a vice-president of the corporation, and they shall also elect a secretary and treasurer, who are not required to be directors or stockholders, and they may elect the same person to hold both of said last named offices."

Mr. LIND.—What is the object of that? There is

no objection to it.

Mr. McCOURT.—It is to show the entire control in the one person, as will appear from further record.

Mr. UELAND.—We would prefer the whole instrument should be put in, instead of only part. And we have the original here at the disposal of the District Attorney. **[808—532]**

Mr. McCOURT.—I have the copies now. I will put in the entire record then of the Articles and the appointment of attorneys, and showing the officers of the company down to the present time, and its agent at the present time.

Mr. UELAND.—Very well.

Mr. LIND.—No objection.

Mr. GEARIN.—That is the proper procedure. Is its declaration filed with the Secretary of State there also?

Mr. McCOURT.—Yes. Well, then, I will offer in evidence first a certified copy of the authenticated Certificate of Incorporation of the Linn & Lane Timber Company.

Marked "U. S. Exhibit 162."

Mr. McCOURT.—Also a certified copy of the Power of Attorney from the Linn & Lane Timber Company to Fred A. Kribs, together with a copy of the original Power of Attorney from the Linn & Lane Timber Company to Fred A. Kribs, containing the endorsements thereon.

Marked "U. S. Exhibit 163."

COURT.—Filed in the Secretary of State's office?

Mr. McCOURT.—Filed in the Secretary of State's office. I now offer the Annual Report of the Linn & Lane Timber Company for the year ending June

30, 1906, filed with the Secretary of State.

Marked "U. S. Exhibit 164."

Mr. McCOURT.—Also copy of the report filed with the Secretary of State for the year ending June 30, 1907.

Marked "U. S. Exhibit 165."

Mr. McCOURT.—Also copy of the report for the year **[809—533]** ending June 30, 1908.

Marked "U. S. Exhibit 166."

Mr. McCOURT.—Also copy of the report for the year ending June 30, 1909.

Marked "U. S. Exhibit 167."

Mr. McCOURT.—Also copy of the Declaration of Purpose to engage in business in the State of Oregon of the Linn & Lane Timber Company.

Marked "U. S. Exhibit 168." **[810—534]**

Mr. McCOURT.—I presume counsel will admit that the Vernon A. Smith mentioned in these instruments last filed, was the son of C. A. Smith.

Mr. LIND.—Correct.

Mr. McCOURT.—And that Nan Smith is the daughter?

Mr. LIND.—Is the daughter.

Mr. McCOURT.—And that Nan S. Werner is the same as Nan Smith?

Mr. LIND.—Warner.

Mr. McCOURT.—All right. She has since married a man by the name of Warner. Now, if you will let me have the Linn and Lane Timber record, I will introduce such parts of it as I want. (Book produced.) There is also another name there—Johanna A. Smith.

Mr. LIND.—She is the wife of C. A. Smith.

Mr. McCOURT.—Upon our examining these records, there are certain statements in there that—while I would like to put it in the record—I fear that I might be bound by them and I would prefer the record to come in from the other side.

Mr. UELAND.—You may offer them for whatever special purpose you want, so far as we are concerned.

Mr. McCOURT.—The main purpose I wanted was to show the holdings of the stock and that was admitted by the answer, anyway, up to the time the suits were commenced.

Mr. UELAND.—No, you are mistaken.

Mr. McCOURT.—It is admitted by the answer that the stock originally issued was one share to John Lind, one share to Johanna A. Smith and 998 shares to C. A. Smith, for payment for certain lands including the lands in this suit.

Mr. UELAND.—May it please the Court, we would like the **[811—535]** records to show that we produced the records of the Linn and Lane Timber Company and of the Board of Directors through its entire existence. We also produce the record of its stock through its entire existence.

Mr. McCOURT.—No objection to the record showing it.

COURT.—The record will show that they were produced by the defendants.

Mr. McCOURT.—In order to complete or as a part of the record I wish to offer the direction of the Commissioner of the General Land Office bearing date November 26, 1900, directing the investigation of these claims in controversy in this suit—directing E. D. Stratford to make the examination.

Marked "U. S. Exhibit 169."

[U. S. Exhibit No. 169.]

"In reply please refer to 1900–27963, 34263, 47747, 64733.

'P' W. D. H.

G. R. O.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 26, 1900.

Address only the
Commissioner of the General Land Office.

Mr. E. D. Stratford,
Special Agent G. L. O.,
Roseburg, Oregon.

Sir:

On February 24, 1900, your predecessor, Special Agent S. S. Mathers, reported that he had been informed by Mr. C. E. Moulton, of the Land Department of the Northern Pacific Railway Co., that large bodies of valuable land were being entered in Tp. 14 S., Rs. 2 and 3 E., in the **[812—536]** Roseburg, Oregon, land district, at the instance of one Horace G. McKinley, of Wisconsin, who was acting in the interest of Stephen Puter of Portland, Oregon. He furnished a list of names of forty-one persons who had published notice of intention to purchase lands in said townships under the Timber and Stone Act. Subsequently criminal proceedings were begun against McKinley on charges growing out of this matter. Many of those who had advertised to make final proof failed to appear at the date set, probably being deterred by the proceedings against McKinley.

The following entries were made, however, all in Tp. 14 S., R. 3 E.:

No. 8168, Stephen D. Puter, NW1/4 Sec. 20,
" 8169, Ira A. Pilkington, SE1/4 " 26
" 8170, Jno. L. Green, NW1/4 " 35,
" 8171, Thos. Wilson, NW1/4 " 28,
" 8172, Charles Barr, SW1/4 " 35,
" 8173, Charles Burley, SE1/4 " 35,
" 8174, Neal D. Dozier, SW1/4 " 34,
" 8175, Basil H. Wagner, SW1/4 " 28,
" 8176, Harry Saltmarth, NW1/4 " 24,
" 8178, Edward Finley, NE1/4 " 35,
" 8179, John J. Jaggy, SE1/4 " 24,
" 8180, Jay S. Phillips, NE1/4 " 34,
" 8181, Zebulon Smith, NW1/4 " 34,
" 8182, Douglas Atkinson, SW1/4 " 24,
" 8183, Sadie E. Puter, NE1/4 " 20,
" 8184, Josephine Jacobs, SE1/4 " 22,
" 8186, Elaine S. Jacobs, NW1/4 " 22,
" 8231, Isaac R. Brum, SW1/4 " 14,
" 8232, Benj. F. Kirk, NE1/4 " 14,
" 8233, Geo. L. Thompson, NW1/4 " 14,

[813—537]

No. 8234, Peter Buffington, SE1/4 " 14, and
" 8243, Elaine Miller, NE1/4 " 31; also
" 8177, Harry C. Barr, SE1/4 Sec. 14, T. 14 S., R. 2 E.

You are directed to make a thorough and searching investigation of these entries, with the view of ascertaining, in particular, exactly what connection McKinley and Puter had with them. You will search the county records for evidences of transfer and will use every means that may suggest itself to

secure evidence of the fraudulent character of these entries. You will consult with the District Attorney and secure such information as he may be able to give concerning the matter. Report the facts found in each case on form 4–480.

Very respectfully,

BINGER HERMANN,

O. G. Commissioner." **[814—538]**

Mr. McCOURT.—I now offer in evidence the report or letter of E. D. Stratford, Special Agent of the General Land Office bearing date December 24th, 1900, relating to the claims mentioned in the instrument last offered in evidence, together with the remainder of the claims in this suit, and also other claims described in the letter.

Mr. LIND.—There are certain pencil data here. They are not offered.

Mr. McCOURT.—No, we don't offer that—they seem to be made in the Land Office.

Mr. LIND.—Then you offer the entries described in the letter only so far as *they involved* in the suit.

Mr. McCOURT.—Yes, at this time. Of course the letter will become important. It will have to be re-offered in the next case.

Marked "U. S. Exhibit 170."

[U. S. Exhibit No. 170.]

"DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C.
Roseburg, Oregon, December 24, 1900.

Address only the
Commissioner of the General Land Office.

Hon. Commissioner General Land Office,
Washington, D. C.

Sir:—By your letter 'P' No. 1900–27963, *34263*, 47747, 64733, Dated November 26th, 1900, you directed me to investigate and report on 23 timber land entries supposed to have been made at the instance of one Norace G. McKinley, acting in the interest of Stephen Puter of Portland, Oregon. I now have the honor to recommend that the following named entries be held up and that patent do not issue for either of them until I have had an opportunity to make an investigation **[815—539]** of the circumstances connected with their entry as the same parties are interested in them and they are each surrounded with the same suspicious circumstances as are those mentioned in your letter above refered to.

No. 8235, John Harrison,	NW. NW. Sec. 29	Tp. 14 S. R. 4 E.
	Lot 1 N. ½ NW. 30	
" 8236, Jennie Moulton,	E. ½ W. ½ " 32	
" 8238, James B. Cooley,	Lot 3 N. ½ SE. ¼ 31	
	NW. ¼ NW. ¼ 32	
" 8239, Jacob Stilwell,	Lot 1 N. ½ NE. ¼ 31	
	SW. ¼ SW. ¼ 29	
" 8240, Luella Beeman,	Lot 4 S. ½ SE. ¼ 31	
	NW. ¼ SW. ¼ 29	
" 8241, Henry B. Blakely,	Lot 3 N. ½ SE. ¼ 30	
	SW. ¼ SW. ¼ 29	
" 8242, Hugh Blakely,	Lot. 4 S. ½ SE. ¼ 30.	

No. 8244, Frank M. Burford,	SW. ¼ NW. ¼ Sec. 32, and Lot 2 & S. ½ NE. ¼ Sec. 31 Tp. 14 S. R. 4
" 8416, Fred Wodtli,	SE. ¼ 26 " " 2
" 8419, O. J. Mealey,	SW. ¼ " " " "
" 8422, John A. Thompson,	NE. ¼ " " " "
" 8440, Andrew Wiley,	SE. ¼ 18 " " 3
" 8441, Oliver Erickson,	Lots 1, 2 & 3. SE. ¼ NW. ¼ 12 2
" 8442, Wm. W. Billings,	W. ½ NE. ¼ NE. ¼ NE. ¼ Sec. 18 and NW. ¼ NW. ¼ Sec. 17, Tp. 14 S. R. 3
" 8443, Charles Wiley,	W. ½ NW. ¼ W. ½ SW. ¼ 12, " "
" 8444, Samuel D. Pickens,	SW. ¼ SE. ¼ S. ½ SW. ¼. NW. ¼ SW. ¼ Sec. 11 " "
" 8445, Thomas Parker,	NE. ¼ SE. ¼ E. ½ NE. ¼ NW. ¼, NE. ¼ Sec. 11 " "
" 8446, Joseph O. Mickalson,	W. ½ NW. ¼ " W. ½ SW. ¼ Sec. 10 " "
" 8447, Joseph H. Stingrandt,	E. ½ E. ½ " " " "
" 8448, Geo. W. Pickins,	E. ½ E. ½ " 12 " "
" 8508, Alexander, Gould,	E. ½ NW. ¼ SW. ¼ NW. ¼. SW. ¼ NE. ¼. Sec. 24. Tp. 14 S. R. 4

[816—540]

No. 8509, Sydny H. Scanland,	W. ½ NE. ¼ NE. ¼ NE. ¼. Sec. 28. NW. ¼ NW. ¼ Sec. 27, Tp. 14 R. 4 E.
" 8511, John J. Gilliland,	NW. ¼ " 28 " " "
" 8512, Louis Maynard,	NE. ¼ SW. ¼. W. ½ SW. ¼. NW. ½ SE. ¼. Sec. 22 Tp. 14. "
" 8510, Richard F. Malone,	NW. ¼ " " " " "
" 8513, Cornelius N. Tuttle,	S. ½ SE. ¼. Lots 3 & 4, 18 " "
" 8516, William J. Lawrence,	E. ½ SW. ¼. S. ½ SE. ¼ 20 " "
" 8517, James W. Rozell,	N. ½ SE. ¼ N. ½ SW. ¼ Sec. 28
" 8522, Richard C. Watkins,	W. ½ NE. ¼ SE. ¼ NE. ¼. NE. ¼ SE. ¼ Sec. 22

Very respectfully,
E. D. STRATFORD,
Special Agent G. L. O."

ENDORSED:

21/586 11465 6

U. S. GENERAL LAND OFFICE,
Received Jan. 2, 1901.

DEPT. OF THE INTERIOR
Received
Apr.
28
1902

932 377

L. & R. Div.

Special Agent,
E. D. Stratford,
Roseburg, Oregon.
Date Dec. 24th, 1900.

Subject:

Recommending that certain timber land entries herein named be suspended pending investigation.

Ack. Jany. 2, 1901.

Jany. 16/01 To Stratford, stating entries. Action suspended on entries &c. G. R. D.

Reference is had to letter "P" No. 1900, 34263, 27963, 47747, 64733, of Nov. 26th, 1900.

P— 3 OGDEN.

[817—541]

Mr. McCOURT.—I now offer for identification the check of Fred A. Kribs dated March 8, 1901, as follows:

[U. S. Exhibit No. 171.]

"Roseburg, Oregon, March 8, 1901.

FIRST NATIONAL BANK OF ROSEBURG.

Pay to Yourselves or Order $400.00

Four Hundred and no/100.....Dollars.

FRED A. KRIBS."

Check marked "U. S. Exhibit 171 for Identification."

Mr. McCOURT.—I now offer in evidence the report of E. D. Stratford, Special Agent of the General Land Office to the Commissioner of the General Land Office, dated March 9, 1901.

Mr. LIND.—Is not that the same one that is already in evidence?

Mr. McCOURT.—No, it seems to be different, covering a larger portion of the claims in controversy in this suit.

Mr. LIND.—No objection.

Marked "U. S. Exhibit 172."

[U. S. Exhibit No. 172.]

"Roseburg, Oregon, March 9, 1901.

Hon. Commissioner,
General Land Office,
Washington, D. C.

Sir:—

I have the honor to submit the following report in obedience to instructions contained in your letter 'P,' 1900–27963, 34263, 47747, 64733, dated November 26th, 1900, directing me to investigate and report upon the following named timber land entries, in the Roseburg, Oregon, land district, viz: **[818—542]**

No. 8168, Stephen D. Puter,	NW. ¼	Sec. 20,	Tp. 14	S.,	R. 3	E.
" 8169, Ira A. Pilkington,	SE. ¼	" 26	" "		"	
" 8170, Jno. L. Green,	NW. ¼	" 35	" "		"	
" 8171, Thos. Wilson,	NW. ¼	" 28	" "		"	
" 8172, Charles Barr,	SW. ¼	" 35	2 "		"	
" 8173, Charles Burley	SE. ¼	" 35	" "		"	
" 8174, Neal D. Dozier,	SW. ¼	" 34	" "		"	
" 8175, Basil H. Wagner,	SW. ¼	" 28	" "		"	
" 8176, Harry Saltmarth,	NW. ¼	" 24	" "		"	

No. 8178, Edward Finley,	NE. ¼	Sec.	35	Tp.	14 S.	R. 3 E.
" 8179, John J. Jaggy,	SE. ¼	"	24	"	"	"
" 8180, Jay S. Phillips,	NE. ¼	"	34	"	"	"
" 8181, Zebulon Smith,	NW. ¼	"	34	"	"	"
" 8182, Douglas Atkinson,	SW. ¼	"	24,	"	"	"
" 8183, Sadie E. Puter,	NE. ¼	"	20	"	"	"
" 8184, Josephine Jacobs,	SE. ¼	"	22	"	"	"
" 8186, Elaine S. Jacobs,	NW. ¼	"	22	"	"	"
" 8231, Isaac R. Brum,	SW. ¼	"	14	"	"	"
" 8232, Benj. F. Kirk,	NE. ¼	"	14	"	"	"
" 8233, Geo. L. Thompson,	NW. ¼	"	14	"	"	"
" 8234, Peter Buffington,	SE. ¼	"	14	"	"	"
" 8243, Elaine Miller,	NE. ¼	"	31	"	"	"
" 8177, Harry C. Barr,	SE. ¼	"	14	"	"	2

Acting on said instructions, I have made as thorough and searching investigation as was possible under the circumstances. I find that from the 19th day of January, 1900, to the 26th day of February, 1900, inclusive, there was filed in the Roseburg Land Office, 48, applications for timberlands under the act of June 3d, 1878, all of said lands being in Linn County, Oregon. On March 9th, 1900, one Thomas Cooper acting Land Agent of the Northern Pacific **[819—543]** Railroad Company, filed an affidavit in said Roseburg Land Office, alleging that 'each of said filings was not made in good faith. That applicant does not intent to appropriate the land for his own exclusive use and benefit; that filing is made for speculation; that there is an expressed or implied contract or agreement for the sale of the land; that applicant never examined any part of said land; and from personal examination does not know its condition.' Wherefore the said Thomas Cooper asked for a hearing on his said protest and that said entries be cancelled. Included in the entries protested were those named in your let-

ter above refered to and hereinbefore mentioned and in addition thereto were included the following to wit:

Miss Mattie McDaniel,	SE. ¼,	Sec.	20,	Tp. 14 S.,	R. 3 E
Clarence Leswill,	NE. ¼	"	24	" 14	2
C. Frank Starr,	NE. ¼	"	28	" 14	3
W. J. Dinkard,	SE. ¼	"	28	" 14	3
Claude D. Lee,	NW. ¼	"	24	" 14	2
Charles F. Smith,	NE. ¼	"	32	" 14	3
Charles Brockett,	NW. ¼	"	32	" 14	3
Walker Boon,	SE. ¼	"	32	" 14	3
Jennie F. Whitney,	SW. ¼	"	12	" 14	3
Edmond L. Archambeau,	NE. ¼	"	33	" 14	3
Anthony T. Thompson,	NW. ¼	"	30	" 14	3
Enos Come,	SE. ¼	"	30	" 14	3
E. C. Brandeberry,	SE. ¼	"	33	" 14	3
C. I. Barr,	SW. ¼	"	33	" 14	3
Charles Farrell,	NW. ¼	"	33	" 14	3
Vicie A. Lunn,	NE. ¼	"	22	" 14	3
H. George Meyer,	SW. ¼	"	22	" 14	3
Carrie L. Meyer,	NE. ¼	"	30	" 14	3

[820—544]

John Pilkington,	NE. ¼,	Sec.	26,	Tp. 14 S.,	R. 3 E
Lee Minard,	SW. ¼	"	26	" 14	3
James H. Doty,	NW. ¼	"	26	" 14	3
Robert S. Henderson,	NE. ¼	"	24	" 14	3
Benj. I. Snyder,	SE. ¼	"	24	" 14	3

Those persons whose names appear in the last-above mentioned list, failed to appear on the day set for their proof and their entries were cancelled, and the land was afterwards entered by the Northern Pacific Railroad Company. I am unable to find any evidence which in any manner connects either Horace G. McKinley or Stephen Puter with these entries in any manner, except that they perhaps received from each of the entrymen a fee for locating them on the land, showing them the corners and estimating the timber. I find by the records of Linn County, Oregon, that each of the tracts men-

tioned in your letter, and which I was instructed to investigate, has been transferred by deed to one John A. Willd of Minn. the consideration mentioned in each deed being the sum of $1.00. So far as I can learn the said John A. Willd has had no connection in any way with said land or any part thereof, until after it was proved up on. I think that the said McKinley and Puter received a commission on the transfer of the land from the entrymen to Willd. I have made diligent inquiry and have made my investigation as thorough and searching as *I* has been possible to make it under the circumstances. It will be re*m*bered that almost a year had elapsed since this land was entered, when the matter was placed in my hands. I have used every possible means which has suggested itself to me, to get at the facts, and I have to report that **[821—545]** I am unable to find any tangible or competent evidence of fraud in connection with these entries or any one of them. I have found the entrymen and their witnesses, when I have been able to find them, very loth to give me any information in regard to the entries. It will be re*m*bered that these persons have been interviewed, investigated and cross-examined, by Special Agents Mathers and Loomis, as well as by numerous agents and attorneys of the Northern Pacific Company. They have also been in the hands of the U. S. Attorney's office, and a number of them have been in court as witnesses in a criminal case against McKinley. They have been advised by their attorneys to keep their mouths shut and they follow this advise strictly. I have consulted frequently and fully with Hon. John

Hall, U. S. Attorney and his deputy Mr. E. Mays, as well as with Hon. F. P. Mays, attorney for the Northern Pacific Company, who had charge of the contests above mentioned, for the said Company, and all of them have informed me that they knew of no evidence of fraud connected with the entries in question, or either of them, sufficient to sustain a contest and that in their opinion a contest would entail needless expense. Mr. F. P. Mays the attorney for the Northern Pacific Company who conducted the proceedings on the part of the company which resulted in the cancellation of the 23 entries herein refered to, informed me that his company had used every possible effort to discover grounds for further contesting those entries which were not cancelled, being the ones refered to in your letter above mentioned, and that in his opinion every entry was cancelled which was fraudulent or at least which could be proved to have been fraudulent, and that he thought that the Company had "bluffed" off a number of the **[822—546]** entrymen, who might have prooved up on their land, had they not been scared out. While it may be claimed that the fact that all this land was conveyed shortly after it was entered, to one person, is evidence of fraud, yet the fact remains that each contest, if contests should be instituted, would be conducted indipendently of all the others, and evidence of fraud in one case could not be used as evidence in another case. When it is considered that three Special Agents, including myself, the agents and attorneys of the Northern Pacific Company, who were anxious to have said entries cancelled, in order that the Company which

they represented might acquire the land, and the U. S. Attorney's office, have all had these entries under investigation at different times, and that in no instance has fraud sufficient to justify a contest been discovered, it would appear to be useless to contest the entries further.

I therefore recommend that said entries and each of them be sustained and that patents issue for the land.

Very respectfully,

E. D. STRATFORD,

Special Agent G. L. O." **[823—547]**

ENDORSEMENT:

21/588 11 41671

U. S. GENERAL LAND OFFICE.

RECEIVED MAR. 16, 1901.

REPORT OF

E. D. STRATFORD,

Special Agent G. L. O.

DEPARTMENT OF THE INTERIOR.

Received April 28, 1902.

L. & R. R. Div.

932 ROSEBURG, OREGON,

March 9, 1901.

In the case of Timber entries, Entry No. 8168 and others.

L. O. Roseburg, Oregon.

Name, Stephen D. Puter and 22 others.

Tract ———.

Lands in Tp. 14 S. R. 3 E.

No. of Report ———.

Date of office letter directing the investigation

Nov. 26th, 1900.

Reference is had to letter "P," 1900–27963, 34263, 47747 & 64733.

Ack. March 16, 1901.

April 15, 1901, to Agt. Stratford for new reports. G. R. O.

3 P OGDEN. **[824—548]**

Mr. McCOURT.—I now offer in evidence report of Special Agent E. D. Stratford to the Commissioner of the General Land Office, bearing date March 9, 1901, relating to the remainder of the claims in controversy in this suit, not mentioned in the report last mentioned, together with other claims not involved in this suit, but involved in other suits against the same parties.

Marked "U. S. Exhibit 173."

[U. S. Exhibit No. 173.]

"DEPARTMENT OF THE INTERIOR,
General Land Office,
Washington, D. C.

Address only the
Commissioner of the
General Land Office.

Roseburg, Oregon, March 9, 1901.

Hon. Commissioner,
General Land Office,
Washington, D. C.

Sir:

I have the honor to submit the following report: By my letter of December 7th, 1900, I recommended that a list of 20 Timber land Entries, situated in the Roseburg, Oregon, Land District, be suspended un-

til I could make an investigation of alleged frauds in connection therewith.

The entries were as follows:

No. 8235.	John Harrison	NW. ¼ NW. ¼ 29, Lot. 1 N. ½ NW. 30, Tp. 14 S. R. 4 E.
" 8236.	Jennie Moulton	N. ½ W. ½ Sec. 32, Tp. 14 S. R. 4 E.
" 8238.	James B. Cooley	Lot. 3 & N. ½ SE. ¼ Sec. 31 Tp. 14 S. R. 4 E.
" 8239.	Jacob Stilwell	NW. ¼ NW. ¼ Sec. 32, Lot. 1 & N. ½ NE. ¼ Sec. 31, Tp. 14 S. R. 4 E.
" 8240.	Luella Beeman	SW. ¼ SW. ¼ Sec. 29, Lot 4 S. ½ SE. ¼ Sec. 31, Tp. 14 S. R. 4 E.
No. 8241.	Henry B. Blakely	NW. ¼ SW. ¼ Sec. 29, Lot 3, N. ½ SE. ¼ Sec. 30, Tp. 14 S. R. 4 E.
" 8242.	Hugh Blakely	SW. ¼ SW. ¼, Sec. 29, Lot. 4, S. ½ SE. ¼ Sec. 30, Tp. 14 S. R. 4 E.
" 8244.	Frank M. Burford	SW. ¼ NW. ¼ Sec. 32, Lot 2, S. ½ NE. ¼ Sec. 31, Tp. 14 S. R. 4 E.
" 8416.	Fred Wodtli	SE. ¼ Sec. 26, Tp. 14 S. R. 2 E.
" 8419.	O. J. Mealey	SW. ¼ Sec. 26, Tp. 14 S. R. 2 E.
" 8422.	John A. Thompson	NE. ¼ Sec. 26, Tp. 14 S. R. 2 E.
" 8440.	Andrew Wiley	SE. ¼ Sec. 18, Tp. 14 S. R. 3 E.
" 8441.	Olive Erickson	Lots 1, 2 & 3, SE. ¼ NW. ¼ Sec. 12, Tp. 14 S. R. 2 E. NW. ¼ NW. ¼ Sec. 17.
" 8442.	Wm. W. Billings	W. ½ NE. NE. ¼ NE. ¼ Sec. 18, Tp. 14 S. R. 3 E.
[825—549]		
" 8443.	Charles Wiley	W. ½ NW. ¼ W. ½ SW. ¼, Sec. 12, Tp. 14 S. R. 3 E.
" 8444.	Samuel D. Pickens	SW. ¼, SE. ¼, S. ½ SW. ¼, NW. ¼ SW. ¼, Sec. 11, Tp. 14, S. R. 3 E.
" 8445.	Thomas Parker	NE. ¼ SE. ¼ E. ½ NE. ¼, NW. ¼ NE. ¼, Sec. 11, Tp. 14 S. R. 3 E.
" 8446.	Joseph O. Mickalson	W. ½ NW. ¼, W. ½ SW. ¼, Sec. 10, Tp. 14 S. R. 3 E.
" 8447.	Joseph H. Stingrandt	E. ½ of E. ½, Sec. 10, Tp. 14 S. R. 3 E.
" 8448,	Geo. W. Pickens,	E. ½ of W. ½, Sec. 10, Tp. 14 S. R. 3 E.
" 8508.	Alexander Gould	E. ½, NW. ¼, SW. ¼, NW. ¼, SW. ¼, NE. ¼, Sec. 24, Tp. 14 S. R. 4 E. NW. ¼, NW. ¼, Sec. 27.
" 8509.	Sydney H. Scanland	W. ½, NE. ¼, NE. ¼, NE. ¼, Sec. 28, Tp. 24 S. R. 4 E.
" 8511.	John J. Gilliland	NW. ¼, Sec. 28, Tp. 14 S. R. 4 E.
" 8512.	Louis Maynard	N. ½, SW. ¼, W. ½, SW. ¼, NW. ¼, SE. ¼, Sec. 22, Tp. 14 S. R. 4 E.

No. 8510.	Richard F. Malone	NW. ¼, Sec. 22, Tp. 14 S. R. 4 E.
" 8513.	Cornelius N. Tuttle	S. ½, SE. ¼, Lots 3 & 4, Sec. 18, Tp. 14 S. R. 4 E.
" 8516.	William J. Lawrence	E. ½, SW. ¼, S. ½, SE. ¼, Sec. 20, Tp. 14 S. R. 4 E.
[826—550]		
No. 8517	James W. Rozell,	N. ½, SE. ¼, N. ½, SW. ¼, Sec. 28, Tp. 14 S. R. 4 E.
" 8522	Richard C. Watkins,	W. ½, NE. ¼, SE. ¼, NE. ¼, NE. ¼, SE. ¼ Sec. 22, Tp. 14 S. R. 4 E.

The charges of fraud in connection with these entries, were made by certain newspapers published in the County in which the land is situated, and I believed them serious enough to justify the suspension of said entries until I could make at least a preliminary examination. I have now to report that I have made sufficient investigation to convince me that said charges were made without any foundation or knowledge on the part of the parties making them, and that the intention of the parties who charged fraud was more for the purpose of bringing discredit on the administration of the Land Department than that the rights and interests of the Government should be protected.

As I have not been able to find any tangible evidence of fraud having been committed in connection with said entries or any one of them, I hereby recommend that said entries be relieved from suspension and that patents issue in each case in due course.

Very respectfully,

E. D. STRATFORD,

Special Agent."

ENDORSED:

21/588 10 41670

United States Land Office,
Received Mar. 16, 1901.
Department of the Interior,
Received Apr. 28, 1902.
932
L. & R. R. Div.

[827—551]

Special Agent,
E. D. Stratford,
Roseburg, Oregon,
Date March 9th,
1901.

Subject:

Refers to 29 Timber Entries suspended by Special Agent's letter of Dec. 7, 1900, recommending that said entries be relieved of suspension, and that Patents issue.

April 15, 1901—To Agt. Stratford for new reports, G. R. O.

Reference is had to letter recommending suspension of December 7th, 1900.

Ack. Mch. 16, 1901.

P— 3 OGDEN.

[828—552]

Mr. McCOURT.—I now offer in evidence copy of instructions to Special Agent E. D. Stratford by the Commissioner of the General Land Office bearing date April 15, 1901, the same being in answer to the two reports of March 9, 1901.

Mr. LINN.—No objection.

Marked "U. S. Exhibit 174."

[U. S. Exhibit No. 174.]

"In reply please refer WDH.
to 1901–41670, 41671 G. F. P.
'P'
G. R. O.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

Washington, D. C., April 15, 1901.

Address only the Commissioner
of the General Land Office.

E. D. Stratford,
Special Agent G. L. O.,
Roseburg, Oregon.

Sir:

I have a report from you dated March 9, 1901, relative to the 23 timber and stone entries in Tp. 14 S., R. 3 E., in the Roseburg, Oregon, land district, which you were directed to investigate by office letter of November 26, 1900. Also your report of the same date relative to 29 other timber and stone entries in Tp. 14 S., R's 2, 3, and 4 E. which were referred to you for investigation on January 16, 1901.

These investigations were ordered upon charges made by representatives of the Northern Pacific Railway Company, who stated that they had reason to believe that all of said entries were being made for speculative purposes under the supervision and management of one Stephen D. Puter, of Portland, Oregon, and Horace G. McKinley of Brownsville, Oregon. **[829—553]**

You state in these reports that you are unable to find any evidence which connects either McKinley or

Puter with the transaction, except that they perhaps received a fee from each of the entrymen for locating them on the land, showing them the corners and estimating the timber; that each of the tracts embraced in the entries was conveyed to one John A. Willd of Minnesota, soon after final proof was made, but that you were unable to learn that he had any connection with any of the land until he purchased the tracts, and that after making diligent inquiry and as thorough and searching investigation as possible under the circumstances, you are unable to find any tangible or competent evidence of fraud in connection with any of said entries. You say also that you have found the entrymen and their witnesses very loath to give you any information on the subject, and that you had consulted with the United States Attorney and his assistant, and with the attorney for the Northern Pacific Railway Company who had charge of contests brought by said company against some of the entries, and they were all of the opinion that no evidence of fraud in said entries could be secured sufficient to sustain a contest. In view of all the circumstances, you recommend that patents issue on the entries.

Before Special Agent Mathers turned over his work in Oregon to you he had made a partial investigation of these cases, and he reported having interviewed several parties with reference to the matter, among whom were Rufus Brum, Jennings F. Whitney and William J. Drinkard. These men filed applications to enter tracts in T. 14 S. R. 3 E., under the Timber and Stone Act, at the time [830—

554] when the applications were filed on which the entries in question are based, but they did not appear to make final proof at the time advertised.

They stated to Mr. Mathers before the date set for final proof that McKinley had induced them to make the applications, promising to pay all expenses, and after entry was made, either to buy the land himself or to find a purchaser for it, so that the entrymen would make $40.00 or $50.00 apiece, and perhaps more, from the transaction. Shortly after these conversations McKinley was arrested at the instance of Mr. Mathers for fraud in connection with this matter, and it seems that this fact deterred these parties and a number of others from completing their entries. The entries that were made, however, in said township, were apparently all made under the same circumstances as were contemplated in these three cases. That is, the parties were induced by McKinley or Puter to make the entries, with the understanding, in each case, that the land should be sold as soon as title had been obtained thereto. In other words, the entries were made purely for speculative purposes, and not in good faith to appropriate the land to the entrymen's own exclusive use and benefit.

Under the circumstances this office is not willing to pass these entries to patent until it has more conclusive evidence than has yet been shown as to the impossibility of proving their fraudulent character. Your report merely makes the general statement that you have 'made diligent inquiry, etc., and had found the entrymen and their witnesses very loath to give

any information on the subject.' It does not show of whom **[831—555]** you made inquiries, nor what information was given you with relation to the matter, nor is it stated what reasons were alleged by the entrymen and their witnesses for not making a statement to you. Their refusal to do so is itself a strong indication of fraud.

You are directed to make a thorough re-investigation of this matter, and to make detailed reports showing just what efforts you have made to ascertain the facts, and exactly what information you have been able to secure.

You will call upon each of the entrymen for an affidavit, showing all the circumstances connected with his entry, at whose suggestion the entry was made, who furnished the money to pay for the same and on what conditions, what understanding he had with the party furnishing the money or with other parties, as to the use he should make of the land or the timber after he had perfected title, when he examined the land, and what means he used to identify it, etc.

You will also report the exact date when the land was sold in each case, the consideration for the transfer, the name of the transferee and the character of the instrument conveying the land. If the entryman mortgaged the land you should state the facts concerning the mortgage shown by the county records.

In connection with these matters your attention is called to the cases of U. S. vs. Bailey et al. (17 L. D., 468), and U. S. vs. Searles et al. (19 L. D., 258),

which show the construction placed by the Department upon the provisions of the Timber and Stone Act requiring that entries of this kind shall be made only for the exclusive use and benefit of the entrymen. **[832—556]**

In making investigations of alleged frauds in connection with the entry of public lands, you will bear in mind that, as an agent of this office, you have a right to call upon entrymen for a full statement of the circumstances connected with their entries. In interviewing these parties you will inform them of this fact, and that their refusal to reply to your questions will be considered an indication that the entries were not made in good faith.

Very respectfully,

BINGER HERMANN,

Commissioner."

[833—557]

Mr. McCOURT.—I now offer in evidence for the purpose of perfecting the record of these entries, a letter of E. D. Stratford, Special Agent of the General Land Office, to the Honorable Commissioner, dated December 28, 1901.

Mr. LIND.—No objection.

Marked "U. S. Exhibit 175."

[U. S. Exhibit No. 175.]

"DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.
Roseburg, Oregon, December 28th, 1901.

Honorable Commissioner,
General Land Office,
Washington, D. C.

Sir:—

If the interests of the service will permit, I would be very greatly pleased if a transfer could be arranged which will assign me to some district east of the Rocky Mountains, for a time at least.

My reasons for this request are as follows:

I now have under investigation at least 100 Timber and Stone entries, which are alleged to be fraudulent, and others are being continually added to the list. I have gathered quite a large amount of testimony which being in writing could be used by any one succeeding me equally as well as by me. A great many of these cases are practically ready to report to your office. About 75 of these cases relate to land which has been sold to Mr. Frederick A. Kribs a wealthy timber land speculator, or parties whom he represents, and many of them no doubt should be recommended for cancellation. Mr. Kribs has employed to look after his interest in these cases, Mr. A. M. Crawford, an attorney residing at Roseburg, a **[834—558]** personal friend and next-door neighbor for a number of years, Hon. F. P. Mays, State Senator, of Portland, Oregon, and now I am

in receipt of a letter from Judge A. H. Tanner, of the firm of Mitchell & Tanner, attorneys at Portland, the Senior member of the firm being Hon. John Mitchell, U. S. Senator, from Oregon, stating that his firm is also employed by Mr. Kribs and inquiring in regard to the status of the cases. Many of these entrymen are personal friends and neighbors of mine. While the above named Attorneys are gentlemen of high standing, who would not attempt to exercise any improper influence in the cases, yet I think that it can be readily seen that my request is a reasonable one, under the circumstances, and that it should not reflect against my official standing or integrity. If I should remain in charge of these cases, I shall certainly try to do my duty, without fear or favor, but I earnestly hope that an exchange can be arranged which will bring to this field a man of ability and experience, who is entirely free from the influences I have mentioned. I am of the opinion that the work in my hands is in such a condition that it can be taken up by any other experienced man with but little delay and without injury to the service. The importance of these cases will be understood when it is remembered that the party or parties, now holding deeds to these lands from the original entrymen, have invested at least $100,000 in the land, and are prepared to spend a large amount to defend their titles. I would prefer, if it can be arranged to go to Oklahoma, Colorado, or New Mexico, as my boys are in school in Kansas, and I would be glad **[835—559]** to be so located, that I could visit them and my wife who is with them, without con-

suming all of a 30 days' leave, in one trip, but if this cannot be arranged, I would prefer to go anywhere, under the circumstances.

Very respectfully,
E. D. STRATFORD,
Special Agent G. L. O."

ENDORSED:

23/395. U. S. GENERAL LAND OFFICE, RECEIVED JAN. 6, 1902.

3321.

E. D. STRATFORD,
Special Agent, G. L. O.
Roseburg, Oregon.
Date Dec. 28, 1901.

SUBJECT.

Asking for a transfer to some other district for reasons herein stated.

Ansd. February 10, 1902, G. R. O.
Ack. Jany. 6, 1902.
Reference is had to File 3.

P— OGDEN.

Mr. McCOURT.—I offer letter of the Commissioner to E. D. Stratford, Special Agent, dated February 10, 1902.

Mr. LIND.—No objection.

Marked "U. S. Exhibit 176." **[836—560]**

[U. S. Exhibit No. 176.]

"'P' W. D. H.
G. R. O.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.
Washington, D. C., February 10, 1902.

Address only the Commissioner of the General Land Office.

Mr. E. D. Stratford,
Special Agent, G. L. O.
Roseburg, Oregon.

Sir:

I have your letter of December 28, 1901, in which you ask to be assigned to duty in some district east of the Rocky Mountains. You say that you have investigated a large number of Timber and Stone entries in Oregon. A number of these have been sold to Frederick A. Kribs, a wealthy land speculator, or to persons whom he represents, and many of them should be recommended for cancellation. Mr. Kribs has employed a number of prominent attorneys to look after his interests in these entries and the cases are of great importance, more than $100,000 being involved in the lands entered.

You say also 'Many of the entrymen are personal friends and neighbors of mine; while the above named attorneys are gentlemen of high standing, who would not attempt to exercise any improper influence in the cases, yet I think that it can be readily seen that any request is a reasonable one under the circumstances, and that it should not reflect against

my official standing or integrity. If I should remain in charge of these cases I shall certainly try to do my duty without fear or favor, but I earnestly hope that an exchange can be arranged which will bring to this field a man of ability and experience, who is entirely free from these influences I have mentioned,' etc.

You are instructed to complete the reports on all of the cases referred to which you have examined.

When your reports are received here the advisability of assigning you to duty in another district will be considered.

Very respectfully,

W. A. RICHARDS,

Assistant Commissioner."

[837—561]

Mr. McCOURT.—If the Court please, our records show that on March 28, 1902, the Secretary of the Interior, directed the General Land Office to transmit reports of Special Agents on the filings in controversy in this case, together with the other entries that are referred to through the entire correspondence. We haven't that direction, but we wish you would admit that there was such a direction. We will follow it up with the other matter that you request.

Mr. LIND.—My understanding is that there was an investigation by Special Agent Green, and we would be glad to have that produced. We called for it some weeks ago.

Mr. McCOURT.—We haven't found that, but I had access to the letter press copy of that report of

Mr. Green on last evening. It escaped my mind that you had called for it.

Mr. LIND.—Have you the letter press copy?

Mr. McCOURT.—No, I did not request to keep the copy, but I will be pleased to put it in. I will see that you get it within the next couple days.

Mr. LIND.—Where is it?

Mr. McCOURT.—Mr. Green has it, but he will be back shortly.

Mr. LIND.—Is he still in the service?

Mr. McCOURT.—No, he has not been in the service for three or four years, but he has his own letter press copies.

It will be admitted, I presume, that that direction was given?

Mr. LIND.—Oh, yes.

Mr. McCOURT.—I now offer in evidence a letter of the Secretary of the Interior, bearing date May 17, 1902, to the Commissioner of the General Land Office, who is directed to relieve the entries from suspension.

Mr. LIND.—The entries involved in this case?

Mr. McCOURT.—Yes, with others.

Marked "U. S. Exhibit 177." **[838—562]**

[U. S. Exhibit No. 177.]

"932–1902. E. J. H.

L. and R. R. Div. E. J. H.

DEPARTMENT OF THE INTERIOR,
Washington.

May 17, 1902.

The Commissioner of the
General Land Office.

Sir:

Your communication of April , 1902, in reply to departmental inquiry of March 28, 1902, enclosing to you the report of Special Inspector A. R. Greene, relative to a large number of supposed fraudulent entries of timber lands in the Roseburg and Oregon City land districts, Oregon, has been considered in connection with the report thereon of Special Agent E. D. Stratford, which you enclose.

March 10, 1902, Mr. Green reported upon 53 entries, under the timber and stone act, in the Roseburg district, and 14 entries under the same act and 10 commuted homestead entries in the Oregon City district, all of which were made about two years ago, and of which 22 of those in the Roseburg district were sold to Frederick A. Kribs, and 31 to John A. Willd within a few days after final proof was made.

It appears that four of said entries in the Roseburg district have been patented, and of the remaining 49 all but one are included in the reports of Special Agent Stratford, and also reported upon some entries not included in Mr. Greene's report.

Mr. Greene's report is general in its terms, not giving the sources of his information, nor does he submit any affidavits or evidence obtained as to said **[839—563]** entries. He states that John A. Willd, representing a lumber company of Minnesota, had the lands cruised by one H. G. McKinley, who subsequently induced parties to locate thereon, representing to them that a mill company stood ready to take the lands off their hands when final proof had been made; that McKinley appeared in a number of cases as a witness; that a large number of said tracts were

mortgaged to Kreibs on the day of the submission of final proof, or immediately thereafter, and others were deeded to him; that 28 tracts were deeded to Willd within 5 days after proof; and that in the case of the 10 commuted homestead entries in the Oregon City district, the lands were all mortgaged prior to the making of final proof. This, however, your office letter states is not correct, but that said mortgages bear date after the submission of final proof, and before the date of the final certificates, the latter not having been given at the time said proof was submitted.

Attached to Mr. Greene's report are sheets containing transcripts from the records of the land offices at Roseburg and Oregon City and the office of the county recorder of Linn county, Oregon, showing the dates of the final certificates; also the dates of the mortgages and sales of the different tracts, the names of mortgagees and purchasers, and the recited consideration therefor.

He also reported, at considerable length, upon the lax and careless methods with reference to timber and stone entries, employed in the local offices in the matter of examination of witnesses, etc.

Under direction of your office, Special Agent Stratford, December 9, 1901, reported upon a list of **[840—564]** 48 timber entries made in January and February, 1900, in the Roseburg office, from which it appears that at the time these applications to purchase were being made the Northern Pacific Railroad Company, through its agents, was examining the same body of land with a view to selecting it

under some lieu land law, and on March 9, 1900, by its agent, filed in the local office a notice of contest against said applications, alleging that the same were not made in good faith for the exclusive use and benefit of the applicants, but for the purpose of speculation; that prior to entry they had made expressed or implied agreements for the sale of the lands; that the applicants had not made personal examination of the lands to ascertain their condition, and a hearing was asked in order that said allegations might be proven.

April 18, 1901, said company filed dismissal as to 24 of said cases, and at the same time filed a relinquishment by the timber applicants for the remaining 24 entries. Thereupon the company entered the tracts for which it had filed relinquishments, and the applicants made entry of the other 24 tracts.

It also appears that while these contests were pending McKinley was arrested on a charge of subornation of perjury, in connection with said entries, at the instigation of the Northern Pacific Company, but upon said hearing before an United States Commissioner, he was discharged.

With reference to the 24 entries that were perfected by the applicants, Stratford reported that each of the entrymen, at the date of submission of proof, borrowed of Kreibs the sum of $600, with which to pay for the land **[841—565]** and the expenses incident to entry, giving a mortgage on the land entered; that a portion of these mortgages bore the same date as the entries, and others were dated directly thereafter; and that within a very few days there-

after the entrymen sold the lands to Willd for a nominal consideration, subject to the mortgages.

Attached to Stratford's report are two or three affidavits, procured by him from entrymen, in which said parties testify that they had no agreement with any one prior to making final proof with reference to a sale of the lands, but that the same were taken in good faith for the use and benefit of the entrymen; also the affidavits of McKinley and Kreibs were submitted, denying any connection with the parties or said lands prior to the taking of said mortgages and deeds.

As to this list of entries, Mr. Stratford, after detailing at length the difficulties encountered in procuring evidence of fraud in such cases, and referring to the fact that the contests begun by the Northern Pacific Company against said entries were dismissed because the company and Special Agent Mathers were unable to secure any evidence of fraud, say*d*: 'I am frank to say that I have some reason to believe that every one of these entries were and are fraudulent, but I am just as frank to say that I don't believe I can prove it.' He therefore recommended that the investigation of said entries be closed and the lands passed to patent.

December 28, 1901, said Stratford reported upon 21 cases of timber entries, made at the Roseburg office, which had been submitted to him for investigation. He states therein that at the time the entries were made the **[842—566]** parties were living in the county where the lands were located; that in many of the cases Kreibs, at the time of the submission of

proof, loaned the entrymen the money to pay for the land, and took mortgages therefor; and that the tracts were sold to him shortly thereafter, except in the case of Fred Wodtli, in which case proof was made August 16, 1900, and the sale September 24, 1900.

The only affidavits submitted, as to this list, were those of Richard F. Malone, one of said entrymen, and Frederick A. Kreibs, the purchaser of said lands. Malone states that he was located by one Thompson, for which he paid $50; that he had no agreement, either express or implied, with any one prior to making final proof, to sell the land, or the timber thereon, after he had made final proof; that one Mealey, acting for Kreibs, furnished him $700, to pay for the land and expenses of making proof, etc., for which he gave a mortgage after he had submitted his proof; that he was in debt for some town property and concluded to sell the land, and subsequently sold it, through Mealey to Kreibs for $850, receiving $150 in cash above the amount of mortgage.

Kreibs states in his affidavit, made before Special Agent Stratford, March 20, 1902, with reference to this list of lands, that some of these parties spoke to him with reference to loans; that as he did not know much about the lands he referred them to Mealey; that in learning from Mealey that the lands were good security for the money wanted, he made short-time loans thereon; that subsequently, on application of the parties to sell him the lands, he made prices on the different tracts, averaging **[843—567]** about $5 per acre, and made purchases thereof; that Mealey was not his agent, and he paid him nothing for his

services; that his impression was, that Mealey made a lower price to the parties than he offered and retained the difference as compensation for his services; that the first knowledge he had of these lands was about the time the parties were to submit their proof, and that he had no agreement or understanding express or implied, with any of said parties, or any one representing them, before they made final proof, as to purchasing the same after proof.

Mr. Stratford, however, reports that 'in no case except that of Fred Wodtli does the entryman offer any reasonable cause for the sale so soon after proof, and in no other case is there offered any reason for the entry, except for pure speculation'; and he considers that the foregoing makes a good *prima facie* case of fraud in connection with each of said entries, except that of Wodtli, under the construction placed by the Department upon the provisions of the timber and stone act as laid down in the cases of United States *v.* Bailey *et al.* (17 L. D., 468) and United States *v.* Searles *et al.* (19 L. D., 258), to which his attention had been called by your office letter of April 15, 1901. He therefore recommends that said entries, except that of Wodtli, be held for cancellation, but says: 'I desire to say further that I have no hope that at a contest, if one should be ordered, in these cases I would be able to procure any additional testimony than that herewith offered.'

February 28, 1902, Stratford reported upon another list of 17 entries, made in the Roseburg land district, **[844—568]** which were referred to him by your office letter of November 2, 1901. In each of

these cases, as appears from his report, the land was conveyed to Kreibs shortly after final proof was made; the entrymen were generally residents of the county in which the lands are located; they were persons of moderate financial circumstances, and of reputation for truth and veracity in the neighborhood in which they lived; that they had no well-defined idea of what use they would make of the lands after entry, but as the same were being rapidly taken up by the Northern Pacific Comapny and individuals who came in from distant states, they concluded to make entry; that they knew the lands were worth more than they would have to pay the Government therefor; and that scores of persons stood ready to purchase said lands at any time they might wish to sell, and to that extent they entered the lands as an investment and for speculation.

He also reports that in none of these cases was he able to find any evidence connecting Kreibs with the entry or entrymen prior to the submission of final proof, and he recommends that said entries be relieved from suspension and the lands go to patent. The affidavit of Arthur L. Thornton, one of said entrymen, and Kreibs were submitted.

Your office letter of April, 1902, submitting said reports of Special Agent Stratford, with accompanying testimony and papers, enters into a very full consideration and statement of the situation, as developed by the special examination had, as to all of these entries reported upon, together with the difficulties attending the establishment of fraud in this class of cases; and **[845—569]** it is stated therein that as to these entries,—

if proceedings are begun looking to their cancellation, on charges that they were made for speculative purposes and in the interest of others than the entrymen, the Government can show that when the filings were made Kreibs and Willds were known to be ready to purchase timber lands in the locality where these entries were made; that the parties were located upon the lands by H. G. McKinley, who was paid by them for his services; that Stephen A. D. Puter secured options on some of the tracts when final proof was made, and in these cases the sales were made through him to Willds; that some of the entrymen borrowed the money with which to make final proof from Kreibs, and that soon after the final proofs were made the lands were all conveyed to Willds or to Kreibs.

It is also said in your letter that while these things raise a suspicion as to the bad faith of the entrymen, they do not furnish such positive evidence of fraud as will justify the cancellation of the entries under the decision of the Court in the case of United States v. Budd (144 U. S. 185), the facts being very similar.

The Department has made a careful examination of the matter of these entries, as set forth in your office letter, together with the reports of Special Inspector Greene and Special Agent Stratford, and the sworn statements of entrymen and others, on file in connection therewith, and is unable to discover any appreciable difference as to the situation in the three different lists reported on specially by Mr. Stratford, though he recommends that in two of said lists the

entries be relieved from suspension and the lands passed to patent, while in the other list of 21 entries, reported on by him December 28, 1901, he recommends that all except one be held for cancellation. No evidence is submitted as to said list or referred to as obtainable, of any agreement made by the entrymen before the submission of final proof, with reference to the sale of said lands. **[846—570]** In fact, the two affidavits, as to said entries, on file, state positively that no such agreement or understanding was had with anybody, and Mr. Stratford says that he does not expect to be able to furnish any additional testimony. His recommendation as to this list seems to be based upon the showing that the parties sold the lands very soon after entry and give no 'reasonable cause for the sale so soon,' and do not offer 'any reason for the entry, except for pure speculation,' which he considers makes a good *prima facie* case of fraud, under departmental rulings in the cases of United States v. Bailay, and United States v. Searles, *supra.*

An examination of those cases, however, shows that the evidence of fraud was much stronger in each than in case of the entries under consideration herein. In the Searles case the entrymen were employed and paid for making the entries for one Montgomery. The testimony was to the effect that they never examined the lands, did not procure the final proof witnesses, or furnish the money to pay the Government for the land, and the expenses incident thereto, but that upon the submission of final proof they executed the deeds in accordance with the agreements entered

into before making the applications to purchase, and received the amount promised therefor. In the Bailey case, one Lohr located the parties, and, as an inducement to have them make the entries, he, at the time of locating them, promised to buy the lands when proof had been submitted and to pay $50 more to each than any one else would pay. As to the case of one McBride, who made entry July 6, 1883, Lohr testified that he had no understanding with McBride [847—571] in the month of June, 1883, relative to the purchase of the land covered by his entry, other than he had with all parties whom he located; that he agreed to buy any claim located by him after the entryman had obtained title, if the latter wanted to sell, and would pay more than any one else; that he could do this because it would save an examination of the claim, and he agreed, usually, to give $50 more than any one else, which promise was made 'as an inducement for the parties to take my (his) word and knowledge, as being good as to the quality and quantity of timber.' It also appeared in that case that Lohr had an agreement with Bailey, in the spring of 1883, by which Bailey was to furnish the money to buy timber lands and Lohr was to attend to the buying and selling, the profits to be divided between them, which agreement was carried out. Neither Bailey nor any of the entrymen were produced as witnesses in the case.

The facts on which the decisions in these two cases were based seem to distinguish them from the entries under consideration. In the latter, Willds, who purchased some of the tracts after proof was submitted,

and Kreibs, who furnished the money to the parties to pay for the land at the time of submission of proof, taking mortgages thereon, and subsequently purchased some of the tracts, are not shown, either directly or indirectly, to have had any connection with the lands or entrymen prior to the submission of proof. There is no evidence of offers to purchase the lands as an inducement to make entry. McKinley merely said to some of them that, after entry, if they desired to sell, he would try and find a purchaser. In the Bailey case, *supra*, Lohr's promise to buy and pay $50 each more than any one else **[848—572]** would pay, was an inducement for persons to make entries purely for speculation. It was held in that case (syllabus) that—

> Timber land entries made for a speculative purpose, and through a collusive arrangement by which the entrymen are induced to make said entries with a view to selling the lands embraced therein to the other party to such agreement, are in violation of the statute and must be canceled.

It is evident, from the reports of Special Agent Stratford, which appear to have been made upon thorough investigation, and examination of many of the entrymen, and from the evidence submitted by him, that a hearing in the cases under consideration would not disclose sufficient evidence of fraud to warrant the cancellation of the entries. Certainly, under the showing, no stronger case could be made respecting these entries than was made in the case of United States v. Budd, *supra*, wherein the court held that there was no violation shown of the timber and stone

act of June 3, 1878, and probably not so strong.

You are therefore directed to relieve said entries from suspension, that the lands covered thereby may, in the absence of any further and good reason to the contrary go to patent.

Regarding the entries in the Oregon City district, referred to in Mr. Greene's report, your letter states that all lands embraced therein have already been patented, except in the case of two of the commuted homestead entries. These entries were not reported on by Mr. Stratford, but there is no showing made in the report of Mr. Greene, as to the 14 timber entries and 10 commuted homestead entries in that district, that would seem to warrant the pursuance of a different course in relation to them from that directed herein with **[849—573]** reference to the foregoing timber and stone entries in the Roseburg district. In the case of these homestead entries it appears, from *you* letter, that final certificates were not issued until several days after the proofs were made, and that the lands were mortgaged by the entrymen after the submission of final proof, but before the certificates were issued. Under departmental decision in the case of Eberhard Querbach (10 L. D., 142), this would not defeat the right to patent. You are therefore also directed to relieve these entries in the Oregon City district from suspension.

As to the lands in the ceded Siletz Indian Reservation, which have recently been surveyed and are reported by Mr. Greene to be chiefly valuable for timber, it appears that the area is not large, and many settlers are already on said lands, some of whom have

made entries since survey. The Department concurs in your recommendation that said lands should remain as at present, to be disposed of under the townsite and homestead laws, as provided by section 15 of the act of August 15, 1904 (28 Stat., 326). Under this act, as modified by the act of May 17, 1900 (31 Stat., 179), and the act of January 26, 1901 (31 Stat. 740), the lands will not be as likely to fall into the hands of speculators as if disposed of under the timber and stone act.

The papers are herewith returned.

Very respectfully,

E. A. HITCHCOCK,

Secretary." **[850—574]**

Mr. McCOURT.—I offer in evidence the direction of W. D. Harlan, Chief of Division "P" of the General Land Office, to Chief of Division "C" of the same office, bearing date May 28, 1902, in which Division "P" notifies Division "C" that the entries involved in this case have been relieved from suspension under Departmental Instructions of May 19, 1902.

Mr. LIND.—Which is the direction of the Secretary of the Interior last introduced and referred to.

COURT.—I understand this correspondence shows that Stratford was directed to investigate these claims and made reports to the General Land Office and that the entries were subsequently called for by the Secretary and transmitted to the Secretary and then the Secretary of the Interior directed that the suspension be removed.

Mr. LIND.—And directed the issuance of patent.

Mr. McCOURT.—I don't know that he specifically

authorized patent, but it would follow.

Mr. LIND.—I call the attention of the Court, however, to the fact, that in the Secretary's direction—the last document offered but one—it is quite lengthy and the several reports are reviewed and reference is made to a report of Special Agent Green which is reviewed and commented upon, as well as the Stratford report, and it is the Green report that we are planning to secure later.

Mr. McCOURT.—We endeavored to get that from the General Land Office, I believe, also from the Secretary of the Interior, but somehow it was not forwarded. Last evening I saw a press copy and it really is an adverse report, but made in such a general way and without any specific direction, that I thought probably it would be immaterial to this investigation, forgetting for the moment that Governor Lind **[851—575]** had called for it, or I should have kept it. I will have it brought back within the next couple days.

Mr. LIND.—We would have obtained copies of some of these documents, or perhaps all of them ourselves, but for the fact of a rule in the Interior Department that any matters pending in Division "P"—that is, for investigation—are not subject to inspection by the public, and certified copies will not be issued upon request, except at the instance of the Attorney General or an order of the court. I will volunteer the statement, however, in connection with what the District Attorney has said, that the review of the contents of the Green report and the Secretary's decision is so complete that the whole matter can be before the Court whether we succeed in get-

ting the Green report or not. That is accurate, is it not?

Mr. McCOURT.—I think so, though I have not as carefully examined it as I might.

Instructions from Division "P" to Division "C" marked "U. S. Exhibit 178."

[U. S. Exhibit No. 178.]

"In reply please refer to 1902–85,089
P
G. R. O.

DEPARTMENT OF THE INTERIOR,
General Land Office,
Washington, D. C., May 28, 1902.

Address only the
Commissioner of the General Land Office.
Chief Division 'C,'
General Land Office.

Sir:

The following timber and stone cash entries in the Roseburg, Oregon, land district, which were referred to this Division for investigation by a special agent, have **[852—576]** been relieved from suspension under departmental instructions of May 19, 1902, and are returned to your Division herewith.

The entries referred to are Timber and Stone Cash Entries Nos. 8169, 8169, 8170, 8171, 8172, 8173, 8174, 8175, 8176, 8177, 8178, 8179, 8180, 8181, 8182, 8183, 8184, 8186, 8231, 8232, 8233, 8234, 8235, 8236, 8238, 8239, 8240, 8241, 8242, 8243, 8244, 8416, 8419, 8422, 8440, 8441, 8442, 8443, 8444, 8445, 8446, 8447, 8448, 8508, 8509, 8510, 8511, 8512, 8513, 8516, 8517, 8522,

8649, 8651, 8653, 8664, 8665, 8666, 8667, 8668, 8669, 8670, 8685, 8688, 8689, 8690, 8691, 8692, 8700, 8701.

Very respectfully,

W. D. HARLAN,

BHG Chief Div. 'P.' "

[853—577]

Portland, Oregon, Wednesday, April 27, 1910, 2 P. M.

Mr. UELAND.—May it please the Court before adjourning when the District Attorney asked for the production of any contract between the defendants Smith and Kribs concerning the acquisition of lands affected by this suit, the statement was made by counsel for the defense that there was no written contract, and in the colloquy which ensued there was a divergence of statement on the part of counsel as to the date of the first written contract. In order that the record may not show any different statements on the part of the attorneys for the defendants, I now produce for the inspection of the District Attorney two original contracts between the defendants Smith and Kribs, the first dated, as I said this morning, December 21, 1901, and the other attached to it December 5, 1902; and in presenting this for his inspection I want to amend a statement I made this morning as to there not being any written contract covering the period then referred to, to this extent. I observe, which I was not aware of when I made that statement, that the contract of December 21, 1901, contains an adjustment of accounts between those two defendants as to lands previously acquired and thus might be said to be a written contract covering that period, although of a later

date. If that is in conflict with my statement, I must amend my statement.

Mr. McCOURT.—I offer the contracts themselves. They may be deemed read into the record and I will not offer them as exhibits. **[854—255]**

MEMORANDUM OF SETTLEMENT AND ACCOUNTING.

Between C. A. Smith and Fred A. Kribs, made the 21st day of December, 1901.

Said Kribs having devoted much time and incurred considerable expense during the years 1900 and 1901 in locating and purchasing timber lands in California and Oregon for said Smith, the land so located or purchased aggregating about 94022 acres, the sum of $26,107.37 is hereby agreed upon by said parties as the amount to be paid said Kribs for all such services rendered and all such expenses incurred by him prior to this date.

Said Kribs has received divers sums of money from time to time from said Smith, and stands charged this day on the books of C. A. Smith Lumber Co. for the sum of $2601.87. For this sum he shall now receive full credit on account of the $26,107.37 aforesaid. The remaining $23,505.50 shall be paid and liquidated as follows. Said Kribs shall be paid as it may be demanded by him from time to time not to exceed $20,000, with 4 per cent interest on the portion of said sum which shall remain unpaid after the date hereof.

The lands located and purchased, as aforesaid, include several thousand acres in Lynn County, Oregon, conveyed by divers parties to one John A. Willd, and several thousand acres in Oregon and

California located and claimed by Forest Reserve and other scrip for which patents have not yet been issued by the United States.

Said Kribs shall, without any additional compensation for his services or personal expenses, exert his best endeavors to perfect the title to all the lands located and purchased through him, and first herein referred to, as to which perfect title is not yet acquired, but all expense **[855—256]** thereby incurred, except for his services and personal expenses, shall be paid by said Smith.

When patents have issued by the United States to the lands last mentioned to such an extent that title to 80,000 acres of the 94,022 acres aforesaid is perfect, the remaining $3505.50 of the compensation for said Kribs, above agreed upon, shall be paid from time to time when demanded by him as fast as patents are issued for the remaining lands the amount to be paid from time to time to be upon the basis of 25 cents per acre of the remaining lands so patented until said sum of $3505.50 is fully paid.

It is further hereby agreed, that if timber lands in either of said states, other than the lands hereinbefore referred to, shall hereafter be acquired by said Smith through the efforts of said Kribs, the compensation for his services and personal expenses shall be at the rate of 50 cents per acre for all lands so acquired, unless otherwise expressly agreed upon between the parties. This includes about 520 acres in Sections 18 and *20*, Township 30 North of Range 9 West, in Douglas County, Oregon, and three claims in Sections 20, 22 and 34, in Township 30 North of Range 10 West, in Coos County, Oregon, which have

lately been bargained for.

C. A. SMITH.
FRED A. KRIBS.

[856—257]

SUPPLEMENTARY AGREEMENT.

As a further and supplementary to the memorandum of settlement and accounting between C. A. Smith and Fred A. Kribs, made December 21st, 1901, it is hereby agreed and understood:

Referring to the last clause of said agreement, there has been paid to said Kribs by said Smith under said clause, in full for all services rendered thereunder, and also for any and all other services, both in securing lands and otherwise, since the date of said referred to agreement and up to the present time, the sum of five thousand, five hundred, fifty and 60/100 ($5,550.60) Dollars.

It is hereby further agreed and understood that in and for the consideration so paid, said Kribs shall prosecute, at his own expense so far as his personal expenses are concerned, to perfect title, as far as possible, any and all lands so entered or secured since the date of said agreement until the present time, with the understanding, however, that said Smith shall pay any and all other necessary expenses for attorney fees that may be thought necessary by said Kribs.

It is also further understood and agreed that for any lands already entered, but not reported on and for any and all lands which may be entered or purchased during the next twelve months, said Kribs shall receive a compensation of thirty (30¢) cents per acre for all lands so secured and title perfected

by him, being intended to cover all services similar to the above.

This supplementary agreement is not intended to cover any other portion of said agreement of Dec. 21st, 1901, except the last clause thereof. [857—258]

In witness whereof we have hereunto set our hands this fifth day of December, 1902, at Minneapolis, Minn.

C. A. SMITH.
FRED A. KRIBS.

Witnesses:

J. F. BISHOP.
CHARLES TRABERT.

[858—259]

[Testimony of Ralph P. Cowgill, for the Government.]

RALPH P. COWGILL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live? A. Medford, Oregon.

Q. What is your business?

A. Civil engineer.

Q. In what capacity were you employed during the year 1908?

A. I was a Special Agent of the General Land Office.

Q. How long were you employed in that capacity?

A. June 1st to about the 1st of December—some-

(Testimony of Ralph P. Cowgill.)

where along there.

Q. What had you been doing prior to that?

A. Engineering work.

Q. State whether or not you had occasion to go to Albany in Linn County, about the 10th day of September, 1908. A. Yes, sir.

Q. What was the purpose of that visit there?

A. It was to examine some deeds in connection with C. A. Smith's suit.

Q. I hand you what purports to be a deed of Charles Smith and Johanna A. Smith to the Linn and Lane Timber Company, bearing date the 4th day of June, 1906, and ask you whether or not that was one of the deeds you examined there at that time?

A. I believe this is one of the deeds. I can identify it absolutely by some notes that I took at that time and turned in.

Q. (Handing witness paper.) Are those the notes that you [859—490] refer to?

A. Yes, sir. That is the deed. (After examining deed and notes.)

Q. For what purpose did you examine the deed?

A. Well, I examined it—

Q. What sort of an examination did you make?

A. I read it over carefully and I examined the signatures and made a special examination of the date when this was put on record and the date of when these instruments were made before the Notary Public—signed.

Q. There was a number of other deeds relating to the same case there at the same time?

(Testimony of Ralph P. Cowgill.)

A. Yes, sir. 7, 8 or 9, I think, altogether. 7 I have a record of.

Q. Now, what was the appearance of that deed there at that time as to its—as to how recently it had been executed?

A. The deed at that time—this particular deed, looked to be very recent to me; in fact, some of the typewriting when I put my fingers on it would rub over and smudge, and even the signatures showed to me that, in my estimation, it was very, very recent.

Q. Did you make comparison between that deed and other deeds there purporting to have been made about the same time?

A. Yes, sir. Here is the notes that I made at the time.

Mr. UELAND.—I would prefer that you testify without your notes, if you remember.

A. Well, of course, I prefer to refer to my notes, because they were made at the time. I can testify, however, without the notes.

Q. If you can testify without the notes, don't use them.

Q. (Read.)

A. Yes, sir. This— **[860—491]**

Q. How did it compare with the other deeds apparently bearing the same date?

Mr. UELAND.—I object to the comparison. I object to the question as incompetent—to make comparison with something that is not here upon which we cannot cross-examine the witness.

Q. Well, have you got the other deeds here that he did compare them with; for instance, the deed

(Testimony of Ralph P. Cowgill.)

purporting to have been made October 27, 1906, by John A. Willd and Ida Willd to Charles A. Smith, for one-eighth interest in the lands in Linn County?

Mr. UELAND.—Those are ancient documents that you refer to.

A. No, they are more recent than this (Smith deed); October 27, 1906, is somewhat younger than June 4, 1906.

Mr. UELAND.—Well, be that as it may, there can be no value in comparing the age of one document with the age of another document, the age of which is not known.

Mr. McCOURT.—Have you those other deeds?

Mr. LIND.—They don't pertain to this case.

Mr. McCOURT.—They refer to matters in controversy in this same series of cases. John A. Willd and Ida Willd to Charles A. Smith for the one-eighth interest to parcels of land in Linn County.

Mr. LIND.—I have not.

Mr. McCOURT.—B. F. Nelson and Mary Nelson to Charles A. Smith of one-fortieth interest in lands mentioned in these timber cases. Charles J. Swanson and Christine Swanson to the Linn and Lane Timber Company for a one-fourth interest in the lands in the other cases.

Mr. UELAND.—I have them. **[861—492]**

Mr. McCOURT.—That purports to have been made May 28, 1906.

Deed of Charles L. Trabert and Harriet A. Trabert to Charles A. Smith for a one-tenth interest in the lands in Linn County.

Mr. UELAND.—Here it is.

(Testimony of Ralph P. Cowgill.)

Mr. McCOURT.—Deed of J. E. Holmberg and Minnie Holmberg October 26, 1906, to an undivided one-fourth interest—I presume that deed was made to Smith.

Mr. UELAND.—You said from Holmberg to Smith—we have that.

Q. I hand you deed of the 26th day of October, purporting to be from J. E. Holmberg and Minnie Holmberg to Charles A. Smith; a deed bearing date May 28, 1907, Charles J. Swanson and Christine Swanson; and deed of Charles L. Trabert and Harriet A. Trabert, bearing date the 23d day of October, 1906, the lands in the Swanson deed being conveyed to the Linn and Lane Timber Company and in the Trabert deed to Charles A. Smith, and ask you if those were among the deeds you examined there that day in connection with that other deed?

A. This corresponds very much with the—the deed from J. E. and Minnie Holmberg corresponds with the one as far as I remember. There were several changes in it. As, for instance, "1905" and the "5" is scratched out and made "6."

Mr. UELAND.—I object. That is not responsive to any question.

COURT.—Identify the deed. That is all you were asked to do—as to whether it is the one you examined at that time.

A. May I see the notes in question? I copied—took an abstract. (Examines notes.) This is not the deed that I examined. **[862—493]**

Q. That Holmberg deed?

A. It is the Holmberg deed, but I would like to

(Testimony of Ralph P. Cowgill.)

examine this number a little more to find the number that corresponds here. Here it is, I guess. It may be that I am wrong. Here is the right number —7933. This is—that is the deed.

Q. Is it one of them? A. Yes, sir.

Q. Look at the other two there and see if they were there at that time.

A. I think this is one also—and this one of Swanson's.

Q. Now, examine the Trabert deed.

Mr. UELAND.—I am mistaken in saying that I did not have the deed from Nelson. Here is that deed. I was misled by it having been recorded in another county at another date.

A. So far as I am able to tell, that is the same deed.

Q. That is one of the deeds that were there?

A. Yes, sir.

Mr. LIND.—Which one is that?

Mr. McCOURT.—That is the Trabert deed.

Q. I call your attention to deed of B. F. Nelson and Mary Nelson, bearing date the 10th of August, 1907, to Charles A. Smith, and ask if that is one of the deeds that were there, with which you made comparison?

A. This corresponds also, yes, sir.

Mr. UELAND.—Mr. District Attorney, does that cover all you inquired for?

Mr. McCOURT.—All but the Willd deed. There was a Willd deed filed there at that time. Not lands in this case, but lands in another case.

Mr. UELAND.—I have that too. I was misled by

(Testimony of Ralph P. Cowgill.)
the county and the date. Here it is.

Q. I ask you to examine a deed bearing date the 27th day of **[863—494]** October 1906, purporting to be executed by J. A. Willd and Ida Willd, his wife, to Charles A. Smith, and ask you if that was among the deeds you examined there?

A. Yes, sir.

Q. I also call your attention to deed purporting to be made the 15th day of August, 1907, by Nils O. Werner and Eva C. Werner, his wife, to the Linn and Lane Timber Company, and ask if you examined that at the same time.

A. To the best of my knowledge it is.

Q. In your examination of those deeds at that time, did you call anyone to your assistance?

A. Yes, sir.

Q. For the purpose of determining their order in which they had been made? A. Yes, sir.

Q. Who?

A. The County Recorder and his assistant, the Deputy Recorder. I also—

Q. What was the Recorder's name—Frohman?

A. Crum— I could not tell you the name now unless I would hear it. It was a Miss—a Mrs. something; a woman there, but I don't remember her name right now. It has slipped by memory.

Q. Miss Francis?

A. Yes, Miss Francis, I believe.

Q. And the other party was the recorder himself?

A. The recorder himself.

Q. Who else did you call?

A. I called an abstracter at the same place.

(Testimony of Ralph P. Cowgill.)

Q. Mr. Curl?

A. Curl, that is the name. **[864—495]**

Mr. UELAND.—What is the name?

A. Curl.

Q. Now, then, I think I asked you as compared with these other deeds—I don't know but what he answered that once—as compared with those other deeds, what was the appearance of the deed of C. A. Smith to the Linn and Lane Timber Company?

Mr. LINN.—That is incompetent. No base is laid for expressing an expert opinion. He can describe the instrument.

COURT.—He can tell in what way they differed, if they did differ, what he saw in fact.

Q. How did they differ there? How did that deed differ from the others in appearance?

A. It was much newer. It was very fresh. The typewriting in the pages here would blur it a little bit when you touched them with your fingers, and the signatures when held to the light were very plain as if they had just been written. You could see the ink with this lustre, not like ink after it has been dried for any length of time.

COURT.—Speaking of the deeds to the Linn and Lane Timber Company now? A. Yes, sir.

Q. That is the deed you had in your hand just now?

A. Yes, sir. (Referring to Smith deed to L. & L. T. Co.)

Q. And what was—what do you have to say about that deed of Nils O. Werner to the Linn and Lane Timber Company? A. That likewise was—

Mr. UELAND.—Wait a minute. We object because no averment in the bill that that deed was not executed at the time it purports to be.

COURT.—He is offering this for the purpose of comparison only, I suppose. **[865—496]**

Mr. McCOURT.—My recollection was that there was a similar allegation in there, but I can't recall now.

Mr. UELAND.—You are mistaken about that.

Mr. McCOURT.—I think the bill charges both these were executed later. No, it is not charged in the bill that it was antedated, but I offer it with the others for comparison.

Deed Smith & wife to L. & L. Timber Co. marked "U. S. Exhibit 155."

Deed Holmberg and wife to Smith, marked "U. S. Exhibit 156."

Deed Swanson and wife to L. & L. T. Co. marked "U. S. Exhibit 157."

Deed Trabert and wife to Smith, marked "U. S. Exhibit 158."

Deed Nelson and wife, to Smith, marked "U. S. Exhibit 159."

Deed Willd and wife to Smith, marked "U. S. Exhibit 160."

Deed Werner and wife to L. & L. T. Co., marked "U. S. Exhibit 161."

McCOURT.—I may want to identify further the Werner deed.

Cross-examination.

(Questions by Mr. UELAND.)

In the questions which I shall put to you now on

(Testimony of Ralph P. Cowgill.)

cross-examination, I am going to speak of the fading of the ink and the fading of writing, whether it is by pen and ink or by typewriter, in the sense of its losing its freshness, not in the sense of it becoming indistinct.

A. I understand that, all right.

Q. Do you claim to have expert knowledge upon the subject of the fading of ink or of writing?

A. I do not claim to be an expert, but I have had considerable experience in that line of work. **[866—497]**

Q. You don't claim to have expert knowledge on that subject?

A. Not expert; I have considerable knowledge, though.

Q. Have you had occasion to give special study to any case of the fading of ink, except in this instance? A. Yes, sir.

Q. Please state the case.

A. Well, my first experience began at a business college way back in 1898 at Spokane, Washington, and I followed it up ever since, and in the use of the typewriter—I have used one for several years, and I have kept track of that in a way, to see—to learn.

Q. Well, that would be the same experience then, that any one connected with typewriting would have upon that subject, wouldn't it?

A. Well, to a certain extent, yes.

Q. My question is whether you have had occasion in the past to study any special case where the age of a document was in question.

A. Yes, sir, I have had several—in pursuance of

(Testimony of Ralph P. Cowgill.)
that I was in Washington some years ago, and I had a chance to go back and find the Declaration of Independence and just used that—

Q. That is, you studied the Declaration of Independence?

A. I just studied the writing just to see what effect it would have.

Q. You studied to see how old the ink would be upon the Declaration of Independence. Is that the idea?

A. Yes, just to see the effect—how it faded, the impression the ink left.

Q. What was your conclusion in inspecting the ink on the Declaration of Independence as to how old it was? **[867—498]**

A. Well, that is hardly a fair question, inasmuch as we know the age of it.

Q. Referring to the deed from C. C. Smith and wife to the Linn and Lane Timber Company of June 4, 1906, that you have identified, was it the whole instrument that seemed to you to be new and fresh, or was it only particular parts of it?

Q. Which instrument was that, please?

Q. (Read.)

A. The signatures in particular seemed to be fresh and the typewriting was fresher than the other instruments with the exception of that of the Holmberg.

Q. Was there, in your judgment, any difference in the age of the typewriting and in the signatures?

A. That would be—there was in my judgment, there was a little difference, but I would not—but I

(Testimony of Ralph P. Cowgill.)

wouldn't attempt to give any definite time.

Q. You would not be—you don't feel that you could conscientiously state it as your opinion that as a matter of fact, there was a difference in the age of the typewriting and the age of the signature?

A. No, I wouldn't at this time without referring to my notes—could not say that there was very much difference in the two. This is two years since I examined that.

Q. In your judgment was there any difference in the age of the signatures of Mr. Smith and Mrs. Smith and in the signatures of the subscribing witness and the Notary?

A. I don't remember that now. It seems to me that there—I wouldn't say; I don't remember about those. It seems to me, just as I remember it, that the signatures of Smith himself, and wife were newer, but I could not say. I would not swear to that until I looked at my notes.

Q. You have now examined that deed and certain other deeds **[868—499]** which you examined at the same time at the Recorder's office, have you not? A. Yes, sir.

Q. Do you think that you are able, at this time, in looking at these different deeds, to say which is the older without looking at the dates?

A. I think so, yes, sir.

Q. Well, we will try you on one and see. I show you document marked for identification Defendants' Exhibit "C" and ask you to look at it except—and ask you not to look at the first page where the date

(Testimony of Ralph P. Cowgill.)
is, and not to look at the date of the acknowledgments.

A. Well, it will be necessary for me to look at the signatures, too. They go with it.

Q. Yes, you may look at that. That is the second page, and there is the third page. Now, you may take Plaintiff's Exhibit 155, and make comparison and then state which you think is the older instrument.

A. On the face of it this shows to be the older instrument, but that ink—it might have been made at the same time.

Q. The fact is, you cannot tell which is.

A. You cannot tell right down to within a short period of time, of course.

Q. Within how *a* short a period of time do you think you could tell?

A. Within six months or a year—something that way, with such a little lustre.

Q. Within six months or within a year?

A. That is a little bit newer.

Q. You say that "Defendants' Exhibit 'C' for Identificatien" as shown you, is newer, or do you?
[869—500]

A. It looks to be a little newer there—probably is about the same time. The difference in the ink there would make some difference. There is a little difference in that ink. This is a newer piece of work than this.

Q. How much?

A. I would not say exactly how much. It might have been made within a month—probably some-

(Testimony of Ralph P. Cowgill.)

where near that time.

Q. However, for all you can tell "Defendants' Exhibit 'C' for Identification" might have been made within a month or two?

A. So far as that part, not the signatures—that typewriting would not change so very much in a short time.

Q. As to those signatures, how recent might those have been made, for all you can tell?

A. Well, for all I can tell, they might have been made—they was evidently made—I want to hold it up to the light so I can tell.

Q. Don't look at the dates.

A. I won't look at the dates. I will be honest with you in that.

Q. You might see the certificate on the other side.

A. No, I won't. That appears to me to have been made about the same time—I examined the other deed.

Q. Now, what is your best judgment on that subject, whether it is the same age or a different age?

Mr. McCOURT.—Let him compare the signatures.

Q. Yes, indeed.

A. If you will hide the dates I want to hold them up to the light.

Q. All right.

A. I can't see it. Well, these appear to me to have been made about the same time, yes, sir.

Q. Now, you keep that. (U. S. Ex. 155.) [870—501]

A. This is the same age you just had here.

(Testimony of Ralph P. Cowgill.)

Q. I now show you the second page of a document marked "Defendant's Exhibit 'D' for Identification," and ask you to state how old, in your opinion, that document is—typewriting and the signatures. There is the certificate again that I don't want you to examine.

A. You are trying to get me into trouble.

Q. No, not at all.

A. Let me see that. Well, I can't tell any difference in that one. I can tell the difference in this one, but not the one you handed me previous.

Mr. LIND.—Which does he refer to by "this"?

Mr. UELAND.—My question will cover.

A. Let me have those two again, please. That ink shows a plainer signature—a more recent signature than this one.

Q. Is it your judgment that the signature on "Defendants' Exhibit 'D' for Identification" is more recent than it is on "Plaintiff's Exhibit 155"?

A. Yes, sir, but I would not swear it is very much, but it is some.

Q. How much would you say, in your opinion, it would be more recent? Give your best opinion.

A. Well, it might be a year. I should hate—I would not swear it would be, but it may be. It makes some difference where it has been kept. So many things enter into this writing proposition. It is very hard for even the best of us to tell.

Q. I show you two documents—one marked "Defendant's Exhibit 'E' for Identification" and the other marked "Defendant's Exhibit 'F' for Identification." I just hand you the typewritten

(Testimony of Ralph P. Cowgill.)

part of those two documents. Can you tell which is the older or whether they are the same age? **[871—502]**

A. I—it is hard to tell on these. It is different—different kind of ink. The black looks to be the older, but I can't tell. The change in them—they are not the same. The change—the black—you ought to have two of the same kind of ink to compare them. I could compare them better.

Q. But your judgment is that the black—the one in black typewriting—is older than the one in blue typewriting?

A. It looks that way from here. I hate to compare that way. It is pretty hard to do.

Q. Indeed, you can't tell the difference in age.

A. You can—you can tell. My testimony in this case covers the deeds in question, and I would like to have those to answer from, if it is fair. My knowledge comes from these. No one can say from looking at them—the paper and the ink—

Q. Well, typewriting is typewriting, whether in a deed or any other documents, isn't it?

A. Oh, certainly; certainly.

Q. Now, would you please state where the typewriting, in your judgment, is the older in these two documents—if you can state, and if you can't please say so.

A. Let me take it. My judgment is that is the older one.

Mr. McCOURT.—The black one?

A. Yes, sir.

Q. How much older, would you say?

(Testimony of Ralph P. Cowgill.)

A. I would not state how much older. It is on account of the difference in ink. It may not be any older so far as that goes, but it looks that way.

Q. Might not be any older?

A. Might not be. As a matter of fact, after I look at six **[872—503]** or eight or ten of those, a fellow—he is hardly capable of passing judgment on the age of it. You can get so many different shades and they all blend together.

Q. On the two documents that I just have shown you, I show you the signatures of John McCourt, the District Attorney. Which, in your judgment, is the older signature?

A. Turn it up to the light. I can't do anything without the light.

Q. Well, I don't want to show you the date.

A. Well, you have to take it so I can hold it to the light.

Q. Well, we will take it to the window.

A. Well, I have to have the light show through.

Q. I can't do that without showing the date underneath. That is the trouble.

A. I would not attempt—

Q. Can't you get the light this way?

A. You can't get the light so it will shine through the paper.

Q. Can't you get it this way?

A. No, I want it to shine through the paper. You can cut that out if you want to.

Q. No, the Court would not let me do that.

A. If I claimed to be an expert, it would be a different proposition. I might jump right at it

(Testimony of Ralph P. Cowgill.)

and tell you, but I am not pretending to be an expert.

Q. But you are no expert?

A. I just have some knowledge of it, as I testified.

Q. Well, please take and hold "Defendant's Exhibit 'E' for Identification" up to the light. Then, keeping the paper that way—that is, "Defendant's Exhibit 'E' for Identification."

A. Now hold the other up there.

Q. That is "Defendant's Exhibit 'F' for Identification." **[873—504]**

A. Let me see this other one. I believe the other is the older—the signature. It shows the older. It looks to me that way, holding it up here in the dark.

Mr. UELAND.—May it be stated that the instrument which the witness thinks is the older as to signature is the amended bill, and the one which he thinks is the more recent is the original bill.

Mr. GEARIN.—How much time elapsed between the two?

Mr. UELAND.—About six months.

A. I only got one chance to get out of that. I told him the names showed the other way. That was my testimony.

Q. I show you the typewritten matter on "Defendant's Exhibit 'G' for Identification" without showing you the signature and the date at the foot of it. How old, in your judgment, is that typewriting?

A. I don't think that is over six months.

(Testimony of Ralph P. Cowgill.)

Q. Tell as near as you can how old.

A. Let me have it just a minute, please. I don't think it is over six months. I would not say under that. I would not make any estimate under six months as to the age of the thing.

Q. Is that as near as you can tell the age of it?

A. Yes, sir, that is as near as I can tell.

Q. Well, you notice, now you see the signature, it is dated the 21st day of April, 1910, don't you?

A. Well, that has been made—that is as near as anyone probably could tell—six months.

Mr. UELAND.—May the record show that this is the complainant's amendment to the bill filed the 21st of April, 1910.

A. A good thing I don't claim as an expert. **[874—505]**

Mr. LIND.—He used the term "smudge."

Q. What do you mean by the term "smudge"? I think you used that.

A. I term a smudge when I want to make a copy, or anything, I take a piece of paper and rub my pencil over it and I copy it.

Q. Will you say whether the typewriting on plaintiff's exhibit 155 won't smudge any at this time? A. That one does not. That does not.

Q. Look carefully and see if it does not smudge.

A. No, sir, not the way it did the day I examined it there.

Q. That is not the question. Does it smudge now?

A. No. It may smudge a little, but not so plainly as when I examined it.

(Testimony of Ralph P. Cowgill.)

Q. So your answer is it smudges a little now, but does not smudge as much as it did?

A. I will not answer it smudges now at all. It did smudge when I examined it—

Q. Doesn't it depend a little upon—

A. That is not smudging there. That is nothing but dirt off his fingers. That is dirt. That is not smudging.

Q. Isn't that smudging? Is that dirt?

A. That seems to be a smudge there, but your finger is damp, isn't it? A little moist? That is a smudge there, I would call it.

Q. Without spending much time on it, you notice, do you not, that the typewriting of Plaintiff's Exhibit 155 does smudge some, even now?

A. It does with continued rubbing, but you simply didn't have to touch it when I examined it before; just barely touch your fingers to it.

Q. You can tell, can you not, from the appearance of typewriting **[875—506]** on exhibit 155, that it must have been letter-press copy?

A. What was that again? Read that over again.

Q. (Read.)

A. I could not tell whether—I am not up on any letter press copying; have not done any of it.

Q. Do you mean to say that you cannot even tell whether carbon copies have been taken from typewriting after you inspect it?

A. What is that again?

Q. (Read.) I mean, press copy.

A. Well, this looks to me like original. I could not say. It might have been one copy. It might

(Testimony of Ralph P. Cowgill.)
not; not more than one—looks like the original.

Q. But can you tell or can you not tell whether a press copy has been taken from the typewriter of Plaintiff's Exhibit 155?

A. From this there might have been several taken under that.

Mr. McCOURT.—You understand he means copied in a book with water? Pressed in a letter press?

A. I have not used any, so I would not say. I have not used any at all.

Q. So you cannot tell that? A. No.

Mr. LIND.—You have never used a letter-press copy?

A. No, sir, not of the typewriter. I am not a bookkeeper nor a clerk.

Mr. LIND.—Did you ever operate a copying press— A. No, sir.

Q. For copying typewriting? A. Never.

Redirect Examination.

Q. You say, Mr. Cowgill, you can't tell by looking at the writing, within six months of the age, at any time, of the **[876—507]** writing—the typewriting? A. Will you read that again, please?

Q. (Read.)

A. Did I testify to that? I testified that I couldn't tell in that case, didn't I?

Q. I understood you to say that you were not able to tell at any time within six months of the age of a document by merely inspecting it.

A. I didn't intend to testify that. Maybe I did. If it is there I would like to change that, because

(Testimony of Ralph P. Cowgill.)

there is times when you can, you know.

Q. There are times? A. Yes, sir.

Q. When are they?

A. For instance, in that last instrument where I examined there, where it was only made recently. It showed that—the signature showed recently, but he had two kinds of ink up before me. One ink confused me. Which is the older—I told him the name on the other was the older. I was right in that case, but the confusion of inks put me off.

Q. I invite your attention to Government's Exhibit 155, and ask you to compare the signatures of Charles A. Smith and Johanna A. Smith and state whether or not they were signed at the same time, in your opinion.

Mr. LIND.—That is objected to. The witness has not shown himself to be competent.

Mr. McCOURT.—I withdraw the question. I don't think it is important. A. It was.

Q. You think it was.

Mr. UELAND.—I move to strike that out. **[877—508]**

COURT.—I don't think that is competent.

Mr. McCOURT.—I withdrew the question before he answered it.

COURT.—You can strike that out.

Mr. McCOURT.—Did you put those exhibits in evidence?

Mr. UELAND.—I have no objection to my offers going in evidence, if you wish. I have identified them. You can offer them as your evidence. I

(Testimony of Ralph P. Cowgill.)
don't care to offer any evidence just at this time. You are at liberty to have them.

Mr. McCOURT.—You can keep them and offer them when you get ready.

WITNESS.—There is one thing I wish you would insert in there. That is, my answer to those names on those two papers.

Q. What names?

A. Those last two that I identified the signatures, you know, but not the typewriting, identified right, but when he told her to put the answer down, that was left out of it.

Q. It is not important.

A. I am not testifying as an expert.

Mr. UELAND.—May the records show that "Defendant's Exhibit 'G' for Identification" is—

Mr. McCOURT—Shows amendment of date the 21st day of April, 1910.

Mr. UELAND.—Rather, it is the copy we received with the District Attorney's signature and made at that time.

Mr. McCOURT.—Yes, made at that date.

Witness excused. **[878—509]**

[Testimony of Louis R. Glavis, for the Government.]

LOUIS R. GLAVIS, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Glavis?

A. White Salmon, Washington.

(Testimony of Louis R. Glavis.)

Q. What official position, if any, did you occupy in the years 1908 and 1909?

A. I was Chief of Field Division of the General Land Office with headquarters at Portland part of the time, and part of the time at Seattle, Washington.

Q. Over what did your district extend?

A. It included the State of Oregon, and at a later date, it included Alaska and Western Washington.

Q. Do you recall—you are not in the service now? A. No.

Q. Do you recall, Mr. Glavis, the matter of bringing suits against C. A. Smith and others relative to a large tract of land in Linn County, on behalf of the Government? A. Yes, sir.

Q. You recall that those suits were brought about May 25, 1908? A. Yes.

Q. When was the matter of these lands brought to your attention prior to bringing the suit?

A. During the first part of May, 1908, as I recall, and certain papers were turned over to me as Chief of the Field Division by Mr. Neuhausen; and it was found then that suits had not been barred against a large number of **[879—511]** entries, among which were these entries.

Q. What did you do towards ascertaining the condition of the title to those lands, and when, relative to the commencement of the suit, and under whose direction— A. Why—

Q. —or at whose request?

A. —I—about a week, I think, prior to the bring-

(Testimony of Louis R. Glavis.)

ing of the suits, an examination was made of the county records.

Q. What examination was made of the county records?

A. Why, I directed Special Agents to go to the county seats and examine all the records there to ascertain just what transfers had been made, mortgages and everything that the records would disclose; in other words, to make an abstract of the title.

Q. How many agents did you send to Albany for that purpose?

A. Well, I can't recall exactly because we *we* investigated the title of a large number of cases, among which were these entries, but as I recall at this time, there were three or four agents that investigated the titles at certain periods.

Q. And did those agents report to you?

A. Yes, sir.

Q. And what did you do with the material which they furnished you?

A. I referred them to the United States Attorney.

Q. Did you yourself make any personal examination of the record in Linn County?

A. No, sir.

Q. Do you remember the name of the agent who had the matter in charge, of the abstracts?

A. The one—the first examination of the county records **[880—512]** was made by Special Agent Barton, as I recall, and I am sure that there were

(Testimony of Louis R. Glavis.)

other agents, but I can't recall their names now.

Q. You intimate that there was more than one examination? A. Yes, sir.

Q. What were the subsequent examinations made for?

A. After I submitted the abstracts of title to you, you called my attention to a statement made by somebody that there were other transfers—other transfers that had been made, and you suggested that I have another investigation made. And it was at that period that I sent another agent there to check up the first agent.

Q. Now, when was the—when was it brought to your attention that the Linn and Lane Timber Company claimed any interest in these lands?

Mr. UELAND.—Objected to as immaterial.

Mr. McCOURT.—I want to show diligence in ascertaining whether or not there was any claim on the part of the Linn and Lane Timber Company or anyone else that we did not make parties.

COURT.—He may answer.

A. I first heard of the Linn and Lane Timber Company's connection with these entries after the filing of the suits.

Q. Do you remember the date?

A. Why, it was—no, I can't recall the date. I remember sending Special Agent Cowgill down the day after I heard, or the same day I heard, I think I gave him instructions to go down.

Q. I hand you a memorandum which purports to be a letter from Mr. Cowgill; state if that refreshes

(Testimony of Louis R. Glavis.)

your memory as to the date when you had your attention drawn to the Linn and **[881—513]** Lane Timber Company's claim. A. Yes, sir.

Q. What was that date?

A. September 10, 1908.

Q. What did you do pursuant to that notice?

A. What is that?

Q. (Read.)

Mr. UELAND.—Objected to as immaterial.

Mr. McCOURT.—I don't know as it has any materiality, except that he went immediately.

Q. Did Mr. Cowgill go and make an examination of the records which he has testified to here, pursuant to your instructions?

A. Yes, sir, I directed him to do that.

Mr. McCOURT.—If the Court please, under the counsel's attitude in this case, it seems to me it will become necessary for me to have the officials of Linn County to come down here with their records to demonstrate there was nothing on them to show that the Linn and Lane Timber Company ever claimed anything so far as the records show. I don't believe that is necessary. We have had a careful examination made and the records disclose nothing.

Mr. GEARIN.—It isn't necessary.

Mr. McCOURT.—I understand that counsel will not concede that unless I can show it. If there is anything in the record and you know about it—

Mr. UELAND.—Have we denied what you have stated in the bill about that? I think our answer is perfectly truthful, and if you examine our answer

(Testimony of Louis R. Glavis.)

I think you will find that there is no denial of that that I know of, but it seems to me to come in here and put on record an admission that is so wide in its scope on the spur of the moment, it might [882—514] contain admissions that we don't intend to make.

COURT.—If the counsel can't agree, you will have to make your case by proof.

Q. Did I ask you, Mr. Glavis, whether or not you made a personal examination yourself?

A. Yes.

Q. You answered you did not? A. Yes.

No cross-examination.

Witness excused.

Whereupon proceedings herein were adjourned until Monday, April 25, 1910, at 10 A. M. [883—515]

Portland, Ore., April 25, 1910, 10 A. M.

[Testimony of L. M. Curl, for the Government.]

L. M. CURL, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Curl?

A. I live in Albany.

Q. How long have you lived in Albany?

A. 25 years.

Q. What is you business, Mr. Curl?

A. I am an attorney at law.

Q. Do you conduct any business in connection with your law business?

(Testimony of L. M. Curl.)

A. I am principal owner and manager of Albany Abstract Company.

Q. In connection with that Abstract Company, have you yourself performed any of the labor of searching the records of Linn County?

A. I have.

Q. Are you familiar with those records?

A. I think so.

Q. And in such search, have you had occasion to examine documents in typewriting, and written in ink, frequently?

A. I have some knowledge of typewriting.

Q. Was your attention called to a deed from Charles A. Smith to the Linn & Lane Timber Company about the 11th of September, 1908, by Mr. Cowgill, special agent of the Government? **[884—516]**

A. My attention was called to such a deed. I am unable to state the exact date.

Q. Where was the deed at the time you saw it?

A. It had just been filed with the recorder of conveyances of Linn County.

Q. And was in his possession? A. It was.

Q. Were there a number of other deeds there at the same time, delivered there to the recorder by the same people, or do you recall?

A. I do not remember but the one deed.

Q. Would you know that deed if you saw it?

A. I think so.

Q. I hand you Government's Exhibit 155, and ask you if that is the deed that you refer to, which

(Testimony of L. M. Curl.)

you saw there at that time?

A. That is the deed.

Q. What was the condition of that deed at that time, or rather what was the appearance of that deed at that time, as to being a recently made document, or one of some age?

A. My attention was directed especially to the signatures of the grantors, and as I remember it, it presented a strikingly fresh appearance, while the deed bore date something like two years previous to that time.

Q. Did you have occasion to examine the deed some time later, while it was still in the hands of the recorder? A. I did.

Q. How much later?

A. Well, I could not state exactly; probably two or **[885—517]** three weeks or a month after that time. It remained in the office some time.

Q. What was its appearance then, at this later examination, as compared with your first examination of it, especially the signatures?

A. Well, I think it was very much the same. possibly the signatures appeared to be a little drier, if anything, than they had before.

Q. You speak of them appearing to be a little drier. What was the condition of the signatures as to dampness, that is, the ink?

A. It appeared to be quite fresh.

Q. Would you make any statement as to how recently the signatures appeared to have been placed there?

(Testimony of L. M. Curl.)

A. Well, I could not tell as to that. The character of the ink might have a good deal to do with that, and I am not sufficiently expert to determine those matters.

Q. I will ask you, Mr. Curl, if you, as manager of the Albany Abstract Company, have made an examination of the records of Linn County?

A. I have.

Q. Especially the offices of recorder of conveyances, county clerk, sheriff's office, assessor's office, with a view to determining when the Linn & Lane Timber Company first appears upon those records as having any interest in these lands in controversy in this suit, or any other lands?

A. I have examined the records for the purpose stated so far as the recorder's office, the clerk's office, and the sheriff's office are concerned. I also examined the assessment-rolls of the county, which rolls are in possession of the sheriff and the clerk. **[886—518]**

Q. When does the Linn & Lane Timber Company first appear there upon those records in any capacity?

A. There are three deeds by which they obtained title to lands in Linn County. They were recorded on the 9th of September, 1908, as I recall it. One was from Smith and wife; another was from Swanson; and another was from Nels O. Werner. Those are the only conveyances making title to the Linn & Lane Timber Company in the county.

Q. Does the name of the company appear anywhere else prior to that on the record?

(Testimony of L. M. Curl.)

A. I did not find it in the assessment-rolls except for the year 1909, and I did not find it anywhere else in the records.

Q. Except as you have indicated?

A. Except as I have stated.

Q. In any of those offices you have mentioned?

A. Yes, sir.

Q. Was your attention called to other deeds there at that time purporting to have been made at the same time, and if so, did you make any comparison between the signatures upon them, and the signatures upon this?

A. I do not remember that my attention was called to any deed except the one concerning which I have testified.

Cross-examination.

(Questions by Mr. UELAND.)

Mr. Curl, do I understand you to say that the typewriting on this deed, No. 155, looked to be older than the signatures?

A. I do not remember that my attention was directed **[887—519]** to the typewriting.

Q. You made the statement that the typewriting looked something like two years old, in your direct examination.

A. If I did, it was an oversight.

Q. You do not mean to be so understood?

A. I do not.

Q. Your attention was merely called to the signatures?

A. My attention was called to the deed. I say,

(Testimony of L. M. Curl.)

my attention was directed to the deed, especially to the signatures.

Q. When you refer to the signatures looking at that time as of recent date, do you refer to all the signatures on the deed—those of the grantors, those of the subscribing witnesses, and that of the notary?

A. I do not have a distinct recollection that any of them bore such a resemblance except the signatures of the grantors.

Q. You have no recollection as to the other signatures, mainly, those of the witnesses, and of the notary looking fresh? A. I did not.

Q. Are you familiar, Mr. Curl, with the different inks in use in this country?

A. No, I am not especially skilled in that line.

Q. You are aware that different inks are in common use, are you not? A. Certainly.

Q. Ink of different qualities, some black, some bluish, some of other use? **[888—520]**

A. I find various kinds on the records there.

Q. I now come to use the term "fading of ink," or of writing, in the sense that it is losing its freshness and becoming older in appearance, so you would understand my use of the terms in that sense, Mr. Curl, do you not? A. I have made no special study.

Q. In examining you from now on, I am going to speak of the fading of ink, and of writing, in the sense of its losing its freshness and becoming older in appearance. You will please understand my use of the terms in that sense, will you not? A. I will.

Q. Have you ever observed, or had occasion to

(Testimony of L. M. Curl.)

observe, whether the different inks fade equally fast?

A. According to my observation, they do not.

Q. They do not? Which ink with which you may be familiar fades quicker than other inks with which you may be familiar?

A. Well, the different grades of black ink will fade quicker than blue or green.

Q. The black fades quicker, you say?

A. Yes.

Q. And what is bluish fades slower?

A. That is my understanding.

Q. Have you had occasion to observe, Mr. Curl, whether writing by pen with fine point, from which but little ink flows, fades quicker or slower, than writing with a stub pen, from which ink flows more freely?

A. I am not very well skilled in those matters. I **[889—521]** could only draw a conclusion, which might be right or wrong.

Q. What would your opinion be about that?

A. My opinion is that the heavier stroke would fade more slowly.

Q. Will you now take that exhibit, and tell the Court whether the signatures of the grantors are not in bluish ink, while the signatures of the witnesses and notary are in black?

A. The signatures of the grantors at the time I examined this deed—

Q. Just excuse me. I wish you would just answer the question.

(Question read.)

(Testimony of L. M. Curl.)

A. That was what I intended to state.

Q. That is a fact, is it not?

A. The signatures of the grantors were in blue, a bright blue, or almost a green color. But I do not remember distinctly about the signatures of the witnesses.

Q. Mr. Curl, you have the instrument now before you. Can't you state, from what you see of the instrument now, that the signatures of the grantors are in bluish ink, while the signatures of the subscribing witnesses and the notary are in black ink?

A. The signatures of the witnesses are apparently in black ink, while the signatures of the grantors seem to be considerably faded from what it was before and yet in blue ink.

Q. Do you want to be understood, Mr. Curl, that the [890—522] signatures on that instrument of the grantors and the signatures of the subscribing witnesses and the notary are in the same ink?

A. I do not so understand it.

Q. You can see even now that they are in different ink, can you not?

A. They appear to be different, yes.

Q. You have no doubt about that, have you?

A. My judgment is it is in different ink.

Q. Yes, they are in different ink, and the difference is that the signatures of the witnesses and the notary are in black, and the signatures of the grantors in bluish ink? A. Yes, sir.

Q. Please look at those signatures again, Mr. Curl, and tell the Court, if you can, whether the sig-

(Testimony of L. M. Curl.)

natures of the witnesses and of the notary are not by a fine pointed pen, while the signatures of the grantors are made by a stub pen?

A. The signatures of the witnesses are apparently made with a finer pointed pen than the signatures of the grantors.

Mr. UELAND.—Will you now please hand the instrument up to the Court, so the Court may see the instrument. (Witness does so.)

Q. From what you have stated, Mr. Curl, you would expect the signatures of the grantors to look fresher and newer than the signatures of the subscribing witnesses and the signature of the notary, would you not?

A. Green ink or blue ink of the kind that was on that **[891—523]** deed—

Q. Well, just as you find it on this instrument.

A. Yes, it will last much longer than black ink.

Witness excused. **[892—524]**

[Testimony of Grant Froman, for the Government.]

GRANT FROMAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Froman?

A. Albany.

Q. How long have you lived there?

A. I lived in Albany about 25 years.

Q. What official position do you occupy in Linn County?

(Testimony of Grant Froman.)

A. I hold the office of recorder of conveyances for Linn County.

Q. Linn County, Oregon?

A. Linn County, Oregon.

Q. How long have you occupied that office?

A. I was elected in 1906, June 1st.

Q. Held the office continuously since that time?

A. Continuously during this time.

Q. You were recorder there in September, 1908?

A. I was.

Q. Were you there personally during that month?

A. Yes, it is my recollection that I was.

Q. I hand you Government's Exhibit 155, and ask you if you were there at the time that was offered for filing, or recording, rather?

A. Yes, sir. I filed that personally. My signature is to it.

Q. Of the date it bears upon its back there, the 9th of September, 1908?

A. 9th of September, 1908.

Q. Do you remember, about the 10th day of September, **[893—525]** or the 11th, of that same year 1908, Mr. Cowgill, a special agent of the Government, calling your attention specially to that deed and the signatures thereon?

A. My recollection is there was someone—I don't remember his name—that called my attention to the signature, yes.

Q. You recall that event? A. I do.

Q. What appearance did the instrument have at that time, the signatures thereon especially, as to be-

(Testimony of Grant Froman.)

ing placed there recently, or having some age, etc.?

A. Well, I don't know as I am expert in that line, to testify in behalf as to the age.

Q. I don't ask you to testify as to its age. I ask you to testify as to its appearance.

A. I would say it had a rather fresh look, the signature of the grantor.

Q. Do you recall whether or not you examined the signatures of the witnesses at that time?

A. I do not.

Q. You don't remember that?

A. I don't remember.

Q. Your office, or yourself, furnished me, the United States Attorney, with copies of a large number of mortgages and deeds recently, which have been offered in evidence in this case? A. Yes, sir.

Q. Does the face of the records from which you made copies of mortgages, show satisfactions thereof, if they have been satisfied?

A. All that has been satisfied, shows on the face of [894—526] the original of the copy as it shows of record. And it would also show on those certified copies as it appears of record.

Q. Now, aside from the record of those mortgages, have you made any special examination of your records to determine whether or not any of the mortgages which have been offered in evidence in this case were ever satisfied of record in your county?

A. Yes, I have.

Q. Have any of those mortgages ever been satisfied?

(Testimony of Grant Froman.)

A. None, other than what the certified copies show of record that I have made here.

Cross-examination.

(Questions by Mr. UELAND.)

I understand you to say, Mr. Froman, that the special agent called your attention to the signatures of the grantor on this deed to which you have referred? A. Yes, sir.

Q. But that you do not remember your attention being called to the other parts of the document?

A. No, I don't. I don't remember.

Q. You say that at that time the signatures of the grantors looked to you as being fresh? I think that is the expression that you used? A. Yes, sir.

Q. Do you feel, or did you at that time, feel, able to determine how fresh?

A. No. As I stated, I do not feel as I am expert enough to testify to how long, or anything in that respect, to the age, no. **[895—527]**

Q. For aught you could tell at that time, those signatures having not been exposed to the light, they might have been two years old, for all you could tell, might they not?

A. I wouldn't say as to that. Only it looked, as I have stated, it looked as though it had been freshly written.

Q. Yes, but from your experience, you do not feel that you could tell within a couple of years, as to when those signatures had actually been made, do you?

A. Well, it looked to me as though it had been freshly written, as I have stated.

(Testimony of Grant Froman.)

Q. What do you mean by freshly written?

A. Well, I mean within a reasonable time.

Q. And what do you mean by a reasonable time?

A. It looked similar to a signature that had been made with a fountain-pen ink.

Q. Yes, but I want the Court to understand what you mean by fresh, or a reasonable time.

A. Well, I should say something like five or six months—something similar to that.

Q. About five or six months. Have you had occasion to observe that signatures made by a stub pen, from which the ink flows freely so as to make heavy writing—

A. No, I have not.

Q. I had not completed the question. You do not know whether writing from a stub-pen, from which the ink flows freely, retains its freshness longer than writing from a pen with a fine point, from which the ink flows sparsely? **[896—528]**

A. I am unable to say in regard to that.

Q. You cannot say? A. No, I cannot say.

Q. Look at the signatures to the document that you have now in your hand, to which you have testified. Is it not a fact, Mr. Froman, that the signatures of the grantors, to which you have referred, appear to have been written by a stub-pen, or fountain-pen, with heavier ink than the signatures of the witnesses?

A. I am not expert enough to distinguish the difference whether it was written with a stub fountain-pen or not.

Q. You cannot tell that? A. No, sir.

(Testimony of Grant Froman.)

Q. Can you tell that the signatures of the grantors are made with different ink than the signatures of the witnesses?

A. It looks to be with different ink.

Q. Isn't it a fact that, being in a different ink, the signature of the grantors looks comparatively fresher even now than the signatures of the witnesses?

A. Well, there are so many different inks it is hard to determine on that matter.

Q. Well, you can tell that the signatures of the grantors are in different ink, can you not?

A. It looks to be different ink, yes, sir.

Q. A bluish ink, or bluish tint?

A. It is more of a bluish tint.

Q. While the signatures of the witnesses are in black ink?

A. The signatures of the witnesses are more of a black, yes, sir.

Q. You never had occasion to observe whether bluish **[897—529]** ink retains its freshness longer than black ink?

A. No, sir, I could not testify as to that.

Witness excused. **[898—530]**

Testimony of Irvine Rittenhouse, taken in Case No. 3319, April 29, and stipulated to be used in this case as if taken herein.

[Testimony of Irvine Rittenhouse, for the Government.]

IRVINE RITTENHOUSE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

(Testimony of Irvine Rittenhouse.)

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Rittenhouse?

A. Washington, D. C.

Q. What official capacity do you occupy there, or serve?

A. I am at present Chief of the Division of Accounts in the General Land Office.

Q. What were you doing in January and February, 1905, and prior to that time?

A. I was detailed out here to Oregon with Mr. Burns and Mr. Heney as a clerk in the General Land Office.

Q. Who did you work with while you were here in January, 1905?

A. I worked with both Mr. Burns and Mr. Heney.

Q. Are you a stenographer? A. Yes, sir.

Q. Shorthand reporter? A. Yes, sir.

Q. Were you at that time? A. Yes, sir.

Q. I hand you a check of March 8, 1901, drawn upon the First National Bank of Roseburg for $400, payable to "Yourselves," signed Fred A. Kribs, this check being marked "Government's Exhibit 171 for Indentification" in case 3320, and ask you if you have seen that instrument before?

A. Yes, sir, I have seen this check before.

Q. What was the occasion of your first seeing that check?

A. It was in January or February, 1905, in connection with the taking of some affidavits from Fred A. Kribs that I first saw the check with some others.

(Testimony of Irvine Rittenhouse.)

Q. Was it delivered to Mr. Burns by Mr. Kribs in your presence?

A. Yes, sir, I think it was with some other checks that Mr. Kribs delivered.

Q. Did Mr. Kribs make any statement to Mr. Burns in your presence, and which you made note of at the time of delivering that check, as to—in explanation of the check?

Mr. LIND.—That may be answered by yes or no.

A. Yes, sir.

Q. Did you—what did you do in regard to that statement or explanation that Mr. Kribs made?

A. I took it down in shorthand.

Q. And after you had taken it in shorthand, what did you do with it?

A. Immediately transcribed it.

Q. Did you make an accurate transcription of it?

A. Yes, sir.

Q. Was it submitted to Mr. Kribs when you made it? A. Yes, sir.

Q. And what did he do with it?

A. He read over it and signed it, swore to the affidavit—in the form of an affidavit it was gotten up.

Q. Delivered it to you? A. Yes, sir.

Q. I hand you now what purports to be an affidavit of Fred A. Kribs, dated the 16th day of January, 1905, and ask you whether or not that is the statement or affidavit which you refer to?

A. This is the statement that he made in connection with this check.

(Testimony of Irvine Rittenhouse.)

Q. Were you present when Mr. Kribs signed it?

[900—627]

A. Yes sir, I saw Mr. Kribs sign that.

Q. Did he sign it on the date it purports?

A. Yes, sir, he signed it on that date.

Q. And how did that date accord with the date at which he delivered you the check, or delivered Mr. Burns the check in your presence?

A. It was the same date, as my recollection is now.

Q. Do you recall, without this statement which you reduced to writing, what Mr. Kribs said at the time, or does reading it refresh your memory as to what he said?

A. Well, the reading of it would refresh my memory, but I recall Mr. Kribs' statement even without the affidavit, as to this check, that is, the general statement. His accurate statement, of course, is in that affidavit.

Q. What did Mr. Kribs say about that?

Mr. LIND.—One moment.

Mr. McCOURT.—Just wait a moment. I will put a little more to it.

Q. I show you what purports to be a stub of a check and ask you if that was delivered with the check?

A. Yes, sir, this stub was delivered with the check.

Q. I will now renew the former question. (Question read as follows: What did Mr. Kribs say about that?)

Mr. LIND.—That, your Honor, is objected to, first

(Testimony of Irvine Rittenhouse.)

as hearsay. The objection is made by the defendants whom we represent. Secondly, any statement made by anyone in anywise connected with the title to this land subsequent to his conveyance of that title and subsequent to the issuance of the patents by the Government on which that title was based, is incompetent and irrelevant. And generally in addition to the other objections, evidence of this character is not responsive to any issue in the **[901—628]** case. I repeat again that the evidence is clearly hearsay. What Mr. Kribs or any other person may have said before the Government inquisitor in 1905 is not evidence in this case against our clients.

COURT.—Mr. Kribs is a party to this suit, I understand. It will be evidence against him in case he has any interest, but I don't think it is evidence against your clients. I don't think any declaration that any grantor might have made after parting with the title could bind the objecting defendants; nor is the declaration of a conspirator after the conspiracy is consummated, evidence against anyone except himself. It will be admitted as against Mr. Kribs.

Mr. TANNER.—I would like to make the same objection for my client.

COURT.—If Mr. Kribs has any interest in this controversy this will be competent against him.

Mr. LIND.—Of course, there is no allegation he has any interest in the title.

COURT.—The Government is asking in this suit to recover damages from some of these people for fraud, and for that purpose it will be admitted.

(Testimony of Irvine Rittenhouse.)

Q. (Read as follows: What did Mr. Kribs say about that?)

A. In connection with that check, Mr. Kribs explained that he gave it to Mr. Stratford, or rather, he drew the money on the check for Mr. Stratford—Mr. E. D. Stratford, a Special Agent of the General Land Office, who at the time was investigating some Timber and Stone entries here in Oregon, and gave the money to Mr. Stratford for some land which he owned—he, Mr. Stratford owned— and paid for the land in excess of what Mr. Kribs thought its real value was. **[902—629]** In addition to that check Mr. Kribs also stated at the same time that he had paid Mr. Stratford some other money without any consideration outside of—at a time when he was financially embarrassed in some way or other. That, in a general way, is the statement that Mr. Kribs made at that time.

Q. Did Mr. Kribs in that conversation or in that explanation state how much in excess of the value of the land he had paid Mr. Stratford?

A. Yes, sir, he said that he considered the land worth about $6.00 an acre and paid him $10.00 an acre for it.

Q. How much of a tract did he say it was?

A. Forty acres.

Q. Forty acres. Do you recall, without looking at this memorandum, the amounts that he had paid Mr. Stratford besides the check?

A. Paid him $300 on two different occasions—$175 one time and $125 another.

Q. Did he make any statement in that connec-

(Testimony of Irvine Rittenhouse.)
tion as to how the—when the payments related, or how they related as to dates, in connection with taking a number of affidavits in connection with land entries?

A. Well, my recollection is that it was at the time Mr. Stratford was investigating these timber and stone entries, or shortly prior to that time, and as to whether the payments were made before or after, I don't recall exactly. Those are about the time Mr. Kribs found out that Mr. Stratford was to make investigation of the claims.

Mr. McCOURT.—I offer the check in evidence.

Mr. LIND.—Same objection so far as the defendants we represent are concerned.

COURT.—Same ruling. **[903—630]**

Check marked "Government's Exhibit 171."

Q. Do you remember anything about the exact dates of any of these payments aside from an examination of the memorandum?

A. No, I could not say I would remember the exact date of payments.

Q. Will you look at the memorandum and see if that refreshes your memory as to the dates? If it does not, don't answer it.

A. Yes, the memorandum would refresh my memory as to the dates, as stated by Mr. Kribs, of the payments.

Q. Well, aside from the memorandum do you recall the date that he mentioned?

A. No, I could not say that I would recall it without this memorandum.

Q. (Mr. McCOURT.) I offer the memorandum in

(Testimony of Irvine Rittenhouse.)

evidence, if the Court please, in connection with the witness's testimony, to more accurately fix the date of these payments.

COURT.—Is the statement signed by Mr. Kribs?

Mr. McCOURT.—Yes, your Honor.

Mr. LIND.—We make the same objection, your Honor, that we did.

Mr. TANNER.—I desire to object for Mr. Kribs as irrelevant and immaterial.

COURT.—It will be admitted as to Kribs.

Marked "Government's Exhibit 187."

COURT.—What is the date of the patent of the Government in this case?

Mr. UELAND.—As to the 17 claims in controversy in this suit, as I remember it, 8 of the patents are dated July 9, 1902, and the remainder August 12, 1902.

Mr. McCOURT.—I have some letters here from Mr. Kribs **[904—631]** to Mr. Tanner relative to the taking of the affidavits in this case especially, which I would like to introduce in evidence to show the connection of Mr. Kribs with the taking of the affidavit.

Mr. TANNER.—I desire to note an objection to these letters and telegrams as privileged communications, passing between attorney and client, with reference to these matters, also as being immaterial and irrelevant. I don't object particularly except as they incumber the record. They are privileged communications as between attorney and client with reference to these matters.

Mr. McCOURT.—These letters were delivered

(Testimony of Irvine Rittenhouse.)
into the hands of the Government, as I understand it, by Mr. Tanner, and I don't know that I am prepared to say that that objection that they are privileged communication, is not well taken. They are letters to Mr. Tanner showing the progress of the taking of the affidavits and the—

Mr. LIND.—Is that a proper statement? If they are not properly in the records we don't want them there by the way of the District Attorney.

COURT.—You might submit them to me and I will reserve my ruling.

Mr. LIND.—I ask to have that statement stricken out, for the time being.

COURT.—The statement will be stricken out. If it is a privileged communication it should not be in the record.

Cross-examination.

(Questions by Mr. LIND.)

Mr. Rittenhouse, how long were you here in January or February of 1905?

A. I was here the whole month of January and I was here until the 18th day of February. I think that was the date that I **[905—632]** left Portland.

Q. What was your—what was the general character of the work—your work, during that period?

A. I was taking charge of the evidence as it was collected in connection with the land fraud cases that were being put before the Grand Jury at that time. Was taking affidavits of various people in connection with the investigations, and acting as stenographer for both Mr. Heney and Mr. Burns; had charge of all the documents and records.

(Testimony of Irvine Rittenhouse.)

Q. Were you present when a great many timber and stone entrymen were examined?

A. Yes, sir, I took all the affidavits.

Q. You took all the affidavits?

A. Yes, sir.

Q. Were you present when other witnesses were examined?

A. Yes—not in the grand-jury room, though.

Q. In whose office did you hold forth?

A. In Mr. Heney's room over here in the hotel—in the Portland Hotel.

Q. He was the representative of the Attorney General's Office for the Government here, was he?

A. Yes, sir, he was Special Assistant to the Attorney General at that time, I think. No, no; at that time, he was United States Attorney. He was appointed to succeed Mr. Hall.

Q. He was the United States—acting United States Attorney of this district at that time?

A. Yes, sir.

Q. Who else participated in the work in which you and he were engaged?

A. William J. Burns and—

Q. Who was William J. Burns?

A. Who is he? **[906—633]**

Q. Yes. A. Well—

Q. He is on the way here we were told by the District Attorney the other day, and we want to know who he is—what manner of man.

A. I think he is now—he runs a private detective agency in New York or Chicago.

Q. What was his capacity, official capacity at

(Testimony of Irvine Rittenhouse.)

that time, if he had any?

A. He was a Special Agent of the General Land Office at that time.

Q. For what purpose?

A. Why in connection with these land fraud investigations here.

Q. He was a detective? He was the detective—chief of detectives for the Government, was he?

A. He was appointed a Special Agent for the General Land Office.

Q. What did he do? What was the character of his work?

A. What was the character of his work here?

Q. Yes.

A. He had—he supervised various other Special Agents and would interview entrymen, gather evidence, one thing and another.

Q. For what purpose did he interview the entrymen?

A. Why, to determine whether or not there was any fraud committed, and present such evidence as was secured before the Grand Jury.

Q. What was the object of taking the affidavits? Why were the affidavits taken?

A. I suppose for the same purpose that they keep books in business houses; so they will know what their business is.

Q. Couldn't that have been served by taking a statement of the witnesses? **[907—634]**

A. You mean without having them swear to it?

Q. Yes. A. Why, I suppose it could.

Q. Were the witnesses sworn before they were

(Testimony of Irvine Rittenhouse.)

examined or afterwards?

A. Afterwards; that is—

Q. Who prepared the affidavits?

A. I would take their statements down in shorthand and they were sworn before they made the statement and then they were sworn to the affidavit when it was written out.

Q. You took the statement down in shorthand?

A. Yes, sir.

Q. By way of question and answer?

A. Well, sometimes that way, and then some made general statement.

Q. And you reduced, when questions and answers, when that was the course pursued, you reduced the questions and answers to a narrative form?

A. No, not necessarily in narrative form. If questions and answers, I would take it that way, but the entryman was asked to make a statement of his connection with what was being investigated, and he would make it and I would take it and transcribe it.

Q. Then, the affidavits are your version of the statement?

A. Oh, no; no, indeed. They are the statement of the affiants, the people who made the statements; not my version.

Q. Do you say that the affiants dictated the statements the same as I would dictate a letter to my stenographer?

A. Well, not exactly that way. They would—they wouldn't start off like you would start off

(Testimony of Irvine Rittenhouse.)

dictating a letter, but they would make a statement concerning their connection and I would take the statement down.

Q. And then you would reduce that to writing, which is your version of their statement, rather than *haec verba* statement **[908—635]** of the affiant, isn't it?

A. No, it wasn't my version, because I took down what they said, and they would always read it over themselves before they would sign it and swear to it. It was their own statement. I didn't twist their language around.

COURT.—Let me see that affidavit.

Q. Now, the grand jury was in session at this time? A. Yes, sir.

Q. Were—was there any talk between W. J. Burns and Heney in your presence to these affiants, what the effect would be if they did not make statements or sign affidavits?

A. No, I don't recall any statements as to that effect.

Q. Do you recall of either Burns or Henry using violent language to any of these affiants?

A. No, sir.

Q. Never? A. No, sir.

Q. Never anything said by either about their being sent to State's prison?

A. No, sir, nothing at all like that. That is—that was—they never said anything about State prison. That was all in the minds of the entrymen themselves.

Q. Anything said about their cases being taken

(Testimony of Irvine Rittenhouse.)

before the grand jury? A. No, sir.

Q. Nothing? How did these affiants come to be there? A. They were subpoenaed.

Q. By whom?

A. By the court to appear before the grand jury.

COURT.—By whom?

A. By the court.

COURT.—What do you mean by the court?

A. Well, I don't know—the court. The Clerk of the Court **[909—636]** would issue a subpoena on the request of the United States Attorney.

Q. Were they brought before the grand jury, any of them?

A. I think they were all before the grand jury —all those whose testimony was needed before the grand jury.

Q. All those who signed affidavits—were they taken before the grand jury?

A. I don't know that all were. There may have been a preponderance of evidence, to take all before the grand jury. All that was needed was taken before it, and the others were supposed to be used at the trials.

Q. Now, as a matter of fact, Mr. Rittenhouse, didn't you hear statements made by Mr. Burns to the effect that unless affidavits were subscribed and signed by affiants their cases would be taken before the grand jury?

A. No, sir, I never heard Mr. Burns nor Mr. Heney make any such statement. I have heard lots of talk accusing them of doing it, but I never heard them make any such statements.

(Testimony of Irvine Rittenhouse.)

Q. None were made before you?

A. No, none before me and I will state that I was always with Mr. Burns, as a rule, when he was with these people.

Redirect Examination.

Q. That affidavit of Mr. Kribs there, did he dictate that? A. Mr. Kribs?

Q. Yes. A. Yes, sir.

COURT.—What do you mean, Mr. Rittenhouse, by dictating? Is that Kribs' language?

A. This is Mr. Kribs' language all except this first part there.

COURT.—Did he make that dictation the same as he would dictate a letter to you, or was that prepared and **[910—637]** then signed by him afterwards?

A. No, sir, I took this down in shorthand as Mr. Kribs' statement.

COURT.—That is Mr. Kribs' language?

A. Yes, sir, this is Mr. Kribs' language.

Q. Did you take any other affidavit there from Mr. Kribs about that time?

A. Yes, sir, I took quite a number. I think two or three or four.

Q. Did he exercise considerable care before signing them?

A. He did. He would read over them two or three times and have some changes made or something added. He didn't want it just the way it appeared.

Witness excused. **[911—638]**

[Testimony of T. R. Sheridan, for the Government.]

T. R. SHERIDAN, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Sheridan?

A. Roseburg.

Q. Where did you say you live?

A. Roseburg.

Q. How long have you lived there?

A. Forty-seven years.

Q. What has been your business for the past several years?

A. The last 19 I have been President of the First National Bank.

Q. Of Roseburg? A. Roseburg.

Q. In the years 1899 on up to the present time, have you been actively engaged in conducting the business of the bank? A. More or less.

Q. And what capacity were you serving in in 1900 and 1901?

A. Well, as President and receiving and paying.

Q. You stood at the window—

A. Yes, in case—

Q. —and had general control of all the business of the bank? A. I did.

Q. Do you know Fred A. Kribs? A. I do.

Q. When did you become acquainted with him?

A. About 1900, I think.

Q. And he had an account there in your bank?

A. He did.

(Testimony of T. R. Sheridan.)

Q. You have recently gone over that account, have you not?

A. In a way, yes. **[912—393]**

Q. Yes?

A. With my cashier—bookkeeper.

Q. And have you made a transcript of the account of Mr. Kribs, and the transactions of Mr. Kribs with that bank from the time he opened the account down to 1904, or such a matter?

A. Well, we have partially checked up the list that was furnished us.

Q. Do you recall whether or not you were the man who attended to the business so far as Mr. Kribs' account was concerned, in 1900?

A. Please read that.

Q. (Read.) A. Not individually.

Q. I want to call your attention to a couple of checks—memorandum checks—and ask you—being Government's Exhibits 2 and 3—in whose handwriting in the first place, the memorandum of check, is that? A. My own.

Q. In your handwriting? A. Yes, sir.

Q. What part of it is in your handwriting?

A. All of it.

Q. Well, those endorsements across the face there I refer to?

A. Oh, in lead pencil, in dark, is all my own.

Q. Now, from whom did you secure the authority to—or what was—what charge was made of those sums of money? Against whose account were they charged? A. Mr. Kribs'.

Q. Now, from whom did you receive authority,

(Testimony of T. R. Sheridan.)

if from anybody, to draw these checks for the purposes indicated on them? **[913—394]**

A. Mr. Kribs.

Q. Prior to the time that you made the payments? A. Yes, sir.

Q. Do you recall the incident itself?

A. I do not.

Q. Except as you see it upon them?

A. As I see it there.

Q. The figures there, the words, "On bank's acct." and "On new bank ledger." Did you make those writings upon them? A. No, sir.

Q. And the words there "Cop. on C. A. S. deal."

A. That is not my writing.

Q. I last referred to Gover*mn*ent's Exhibit 3. Now, the words "Cop. in C. A. S. acct.," and "On bank's acct.," and "On new bank ledger." State whether or not those were made in the bank.

A. They were not.

Q. Were they upon the checks when delivered to Mr. Kribs by you?

A. I couldn't swear to that; I think not.

Q. Was there anyone in your office who wrote in a handwriting similar to this?

A. I don't recognize it.

Q. Do you know Mr. Kribs' handwriting?

A. Yes, sir.

Q. State—have you often seen him write?

A. Very often.

Q. Can you state whether or not the words "Cop. in C. A. S. acct." are in his handwriting?

A. I couldn't swear that it was.

(Testimony of T. R. Sheridan.)

Q. You don't know? A. No. **[914—395]**

Q. The words upon Government's Exhibit No. 2, "Paid Land Office for 10 claims." Does that recall to your mind the circumstances or the direction that was given you as to that purchase?

A. It does not.

Q. To whom was this money paid, or to what account was this money paid that is represented by these checks, if you know?

A. Well, other than they appear on the face, I couldn't say. The face shows that I paid it to the Land Office.

Q. Do you remember whether or not that payment to the Land Office was by mere transfer of that sum of money to the account of the receiver, or whether or not the coin was paid to the receiver?

A. I couldn't swear.

Q. What would have been the ordinary method of complying with Mr. Kribs' direction there?

A. I imagine that the money was paid.

Q. Did the receiver carry an account in your bank at that time? A. Yes, sir.

Q. Do you recall how frequently you delivered to Mr. Kribs his cancelled checks, or rather, how often you balanced his deposit book?

A. No; the bookkeepers did that. I had nothing to do with that part of it.

Q. That was done at the—

A. In the usual course.

Q. —request of the depositor, or was his book called for and—

A. No, I am under the impression that it was

(Testimony of T. R. Sheridan.)

statements, and the bookkeeper made the statement up whenever a sufficient **[915—396]** number of checks were on hand. Sometimes once a month, sometimes twice; sometimes oftener.

Q. But in—the intervals would not be further than a month apart in Mr. Kribs' case?

A. Well, I couldn't swear to that because we often let them run longer than that. That is quite a while ago.

Q. Your bankbook, does it have any memorandum upon it which would indicate the dates at which balances were struck? A. Yes, sir.

Q. That is, the deposit books were balanced?

A. Yes, sir.

Q. You can tell then by looking at the—

A. Book.

Mr. McCOURT.—The testimony of this witness can be used in both cases, can it not; that is to say, as far as it applies?

Mr. LIND.—Yes.

Q. The certificate, or rather, the checking of which you spoke—I hand you a typewritten memorandum here and ask you if that is the paper you used to check your books with?

A. Well, yesterday afternoon we went over this partially. We did not have the time after I returned home, to go over it, but so far as we went it is all right.

Q. It was correct? A. Yes, sir.

Q. How far over it did you get?

A. I think we got to the second page only, Mr. McCourt.

(Testimony of T. R. Sheridan.)

Mr. LIND.—What was the answer?

A. I think it was the bottom of the second page or thereabouts. It might have been—

Mr. McCOURT.—I may state that that instrument was **[916—397]** made up from the checking of the accounts which we made, and that it was sent to Mr. Sheridan to make a more complete check, but he was out of town and did not get back until yesterday morning, and I urged him by telephone to come back here before he could get through the thing. I don't know whether counsel want to take our checking for it or not.

Mr. LIND.—Are the books here from which you did the checking?

Mr. McCOURT.—Yes, they are all here.

Q. Before offering this, did you recall that Mr. Kribs kept an account which was designated No. 1 and No. 2 in your book?

A. I do when I look in the book. I can't remember other than that.

Q. Do you recall that the checks which were drawn—or do you recall how the checks were—how you determined whether or not the check was on No. 2 or No. 1?

A. Not at this time; it is too long. I cannot recall.

Q. Well, let me try to refresh your memory. Do you recall that the way you determined that was that checks on account No. 2 were marked No. 2 and no designation marked upon those on account No. 1?

A. Possibly that may be, but I can't remember at this time.

(Testimony of T. R. Sheridan.)

Mr. McCOURT.—Is Mr. Kribs here?

Mr. LIND.—No, but we will find out.

Mr. McCOURT.—Find out whether or not that is a fact.

Q. Now, will you look at this ledger here and tell the Court when the book, Mr. Kribs' deposit book, was balanced subsequent to October 10, 1900? **[917—398]**

Mr. LIND.—Which account was that you are inquiring about?

Mr. McCOURT.—That is No. 1, the C. A. Smith account.

A. Account No. 2? What was the question?

Q. Account No. 1? A. No. 1.

Q. After October?

A. The first balance seems to be the 11th day of July, 1900.

Q. I want the date of balances subsequent to October 10th? A. For that year?

Q. Yes.

A. Just subsequent or all of them?

Q. Just subsequent to October 10th. Well, you might as well give them all while you are at it.

A. The 14th of July, and the 13th of August, and the 17th of August; on the 11th of September. That is all until December.

Q. Well, give the next one.

A. December 8th. More?

Q. One more. A. And December 28th.

Q. I guess that ought to be enough. All 1900?

A. 1900.

(Testimony of T. R. Sheridan.)

Q. At the time such balances were struck in the deposit book, were the cancelled checks delivered?

A. Yes.

Q. To the depositor? A. Yes.

Mr. McCOURT.—Now, I understand that counsel will admit that drafts forming the source of account No. 1 were from C. A. Smith?

Mr. LIND.—I will admit the facts in regard to that. **[918—399]** If that is so it will be admitted, and we can find out whether it is so, but I don't know now. I don't question for a moment but that the drafts were sent by C. A. Smith to Mr. Kribs, or probably the C. A. Smith Lumber Company, but what the particular drafts were, I don't know.

Mr. McCOURT.—I understand you to admit that whether they were from the C. A. Smith Lumber Company or upon the Bank of Minneapolis, they were C. A. Smith's money.

Mr. LIND.—Yes, but what particular draft we don't know.

Mr. McCOURT.—You admit that C. A. Smith was a party in interest and that he was furnishing the money?

Mr. LIND.—Yes, he was a party in interest.

Mr. McCOURT.—Now this certificate—what do you desire in relation to that? Do you want to check the book itself before it is put in?

Mr. LIND.—Or check with Mr. Kribs or someone who knows.

Mr. McCOURT.—That may be done this evening. We will put this certificate in now, until you get a

(Testimony of A. R. Greene.)

chance to check it.

McCOURT.—It is possible if we do it to-night, we may get Mr. Sheridan's assistance.

No cross-examination.

Witness excused. **[919—400]**

[Testimony of A. R. Greene, for the Government.]

A. R. GREENE, a witness called on behalf of the Government, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. McCOURT.)

Where do you live, Mr. Greene?

A. My home is in Portland.

Q. Were you formerly acting in an official capacity with the Government of the United States?

A. Yes, sir.

Q. During what period was that?

A. Well, I was in the employ of the Government covering several periods.

Q. Well, give us the period—you were in the Government service from 1900 on up till 1905?

A. Yes, sir.

Q. And later? A. Yes, sir.

Q. And during the period between 1901, or 1900, say, and 1904, in what capacity were you acting?

A. I was a Special Inspector for the Secretary of the Interior.

Q. In that respect, you were a sort of a confidential adviser of the Secretary, were you not?

A. Yes, sir, in regard to the matters of which I had charge.

(Testimony of A. R. Greene.)

Q. You were the only man occupying the position, were you not, at that time?

A. No, sir. There were four. The law provided for four. I was one of the four.

Mr. LIND.—In this field—in this same field?

A. I was the only one in this field.

Mr. McCOURT.—He was the only one in this field. **[920—838]** There were four in the United States.

Q. During what period were you interested, or looking after matters in Oregon?

A. From January or February, 1902, until the fall of 1905, I think.

Q. Did you have any special assignment during that time, or any special cases?

A. Yes, sir. I had a number of special assignments.

Q. Were you ever assigned to investigate the cases in controversy in this case and the case which is being tried along with it?

A. Well, I don't know that I know what case is being tried along with this. I don't know which two cases you refer to exactly; Mr. McCourt.

Q. Well, I refer to the entries known as the McKinley entries up in Linn County, and entries made by the Mealey boys up there.

A. The Sweet Home entries?

Q. Yes, the Sweet Home entries.

A. No, sir, I was never specially assigned to that.

Q. Did you, on or about the 10th day of March, 1902, make any report to the Secretary in which you referred to those claims?

(Testimony of A. R. Greene.)

A. I wrote a letter to the Secretary on, I think it was the 10th of March, 1902, in which, among other things, I called his attention to conditions as I understood they were prevailing up there with reference to those entries.

Q. What was the purpose of that report; that is, the general purpose of it?

A. Well, it was to give the Secretary a general idea of conditions in regard to the public land entries in the State of Oregon. The letter related to a number of **[921—839]** cases.

Q. Had you any personal information at that time relating to these claims—the Sweet Home claims? That is, had you made any investigation of them?

A. No, sir. At the time I wrote this letter, I had made an examination of the records at Albany and Oregon City, I think it was.

Q. And your report was made entirely from the records as they appear, or practically entirely from them?

A. Almost altogether from the records, yes, sir.

Mr. McCOURT.—What parts of this report did you wish to have introduced? There is some of it does not refer to this at all.

Mr. LIND.—That portion of it which the witness marked in our presence the other day might be read into the record, and also the portion of the abstract containing these entries, if that is your pleasure.

COURT.—I suggest that the District Attorney read it, and let the stenographer take it, and not let

(Testimony of A. R. Greene.)
that book go in evidence.

Mr. McCOURT.—Yes. Mr. Greene does not want it to go in evidence, because there are some private matters in it.

COURT.—Very well. Read to the stenographer that portion you desire to have in.

Mr. McCOURT.—(Reading:)

"DEPARTMENT OF THE INTERIOR.

Oregon City, Oregon, March 10, 1902.

The Honorable

The Secretary of the Interior,

Washington, D. C.

Sir:—

I have the honor to state that owing to excessive and **[922—840]** long continued rains which have rendered the roads in the Siletz country practically impassable, I have not been able to make the contemplated examination of entries in that part of the State and have devoted my time to a study of conditions in more accessible localities. Hence this report will be somewhat of a general character.

The following facts have been elicited in regard to the entry of a valuable body of fir timber in the extreme eastern part of Linn county, adjoining the Cascade Forest Reserve and situated partly in the Oregon City and partly in the Roseburg land district: About two years ago a man named John A. Willd, representing a lumber company of Minnesota, had these lands 'cruised' and through his instrumentality they were entered, principally under the Timber and Stone Act. The financial agent of this man was

Frederick A. Kribs of Portland, Oregon. The cruiser was Horace G. McKinley, who was also the locator and induced the entrymen to take up the lands, representing to them that a mill company stood ready to take them off their hands as soon as final proof could be made and that he wanted only such applicants as would be ready to sell when the time came. Pursuing this policy, McKinley secured a number of men and women from among the class whose living is precarious, largely from the saloons and rooming houses and around the depots and wharves of the towns along the valley and the lands were entered, McKinley appearing in a number of cases as a witness.

In 28 of the 67 cases referred to in this connection, the lands were mortgaged to Kribs on the day of final proof; eight tracts were mortgaged to him one day after proof and one tract three days after proof. Twelve tracts were deeded straight to Kribs on the day of proof and 28 tracts were **[923—841]** deeded to Willd within five days after proof. One entryman, James H. Scott of Albany, Oregon, mortgaged to M. E. Watson on the day of final proof.

Ten commuted homesteads situated in the vicinity and chiefly valuable for their timber (as are all homesteaded lands west of the Cascade Range at this time) have an interesting history when the records in the office of County Recorder are placed in juxtaposition to the records of the local land office. Every one of these entrymen had mortgaged his homestead before the day of final proof and the mortgages

were matters of record at that time: One, four days before; two, five days before; three, eight days before; two, eleven days before and two thirteen days before final proof.

Attached to this report are three sheets containing correct transcripts from the records of the local land offices at Oregon City and Roseburg, and the office of the County Recorder of Linn County, Oregon. These will enable you to trace the history of any given tract of land from the time of its final entry to the time of its mortgage or sale. Only a few tracts have been presented in this case for the reason, that as it might be desired to institute action against the parties, it would be important to do so before the issuance of patent. In this connection I desire to call your attention to the fact that patents were issued seven months after final proof for 13 of the tracts herein, whereas for 49 tracts herein, which were passed to final proof from 18 to 23 months ago, the patents have not yet been issued. However, they may have been held up to await the conclusion of proceedings to test the validity of title.

Referring again to the cases where Kribs became mortgagee and Willd purchaser, immediately after final proof, a strong presumption of collusion is raised. Take the entry of **[924—842]** John Harrison of Brownsville, for example. His final proof certificate is numbered 8235 and dated May 16, 1900. On the same day he mortgaged to Kribs for $600 and the day following he deeded to Willd for $1.00. An isolated case of this kind might occur in good

(Testimony of A. R. Greene.)

faith and honesty possibly, but when it comes to a great number of cases of precisely similar facts, it is quite another matter. Kribs paid out on mortgages in three weeks in April and two weeks in May, 1900 the sum of $18,600.00 for lands passed to final proof immediately preceding the date of the mortgages and immediately following these dates the same lands were deeded to Willd for $31.00, just enough to comply with the law regarding transfers of realty. The fact that the consideration was merely nominal in the cases of the sales, ought it seems to me, to have weight in a judicial consideration of the matter. Also, the fact that public opinion has become debauched to the extent of hostility to an honest enforcement of the land laws in this part of the country should not deter our local officers from a vigorous effort to punish offenders.

There ought to be less difficulty in proceeding against the homesteaders herein named who mortgaged their claims prior to final proof. These are matters, however, for Departmental determination."

I think that is all.

Mr. LIND.—Is there any recommendation at the end?

Q. Is that the only reference to those claims?

A. I don't remember. I have not read the letter for years, or for some time, and I don't remember whether there was any recommendation with reference to those entries or not. The recommendation, if there was one, would be right at the end of the letter.

Mr. McCOURT.—There seems to be a little more that wants to go in here. (Continues reading.) **[925—843]**

"The foregoing are not isolated and exceptional cases as will be seen from the consecutive numbers of the final certificates, but comprise nearly every entry for the dates given. This is significant as showing the extent of the questionable practices before these lands offices.

A complete remedy is not to be hoped for but the evils might be checked if our land officers and special agents would be more alert to the frauds. It cannot be denied that at present the Government is held in contempt by the land grabbers. This is largely in consequence of a failure on the part of the land officers to comply with the law and regulations. For example, the oath is administered in a slighting and careless manner as though it was an obsolete formality; the statute for the punishment of perjury—Sec. 5392—printed, at the foot of the application blanks under the Timber and Stone law, is seldom read to the entrymen; tracts other than those applied for originally, are substituted on the spot by the applicant, for tracts ascertained to be taken, and the land officer says with smiling assent, 'Of course you have been over that tract also,' when it may be in fact true that he never set foot in the State until that morning when he came across the Columbia from Washington. When I have called the attention of the officers to these things they have said to me, 'Life is too short to run

(Testimony of A. R. Greene.)

down all the facts in these little cases; I have long ago ceased to have any confidence in human nature.' In other cases the Receiver has accepted a lump sum of money for a number of timber entries which he had every reason to believe were being made in the interest of a lumber syndicate. When I called his attention to what I had heard in regard to this case, he said, 'No sir, we made him separate it right there and have every man pay his share.' **[926—844]** It is a common thing to hear the Receiver advise entrymen that 'if they discover that their lands are more valuable for timber than for agriculture they can relinquish and take it under the timber and stone act, which is simply an encouragement for these men to hold it as a homestead until they can find a purchases for the timber and make arrangements for the purchase money.' "

Mr. McCOURT.—Now, I don't catch any formal recommendation.

Mr. LIND.—I think the Secretary says, in commenting on it, that there was.

Mr. McCOURT.—That there was a recommendation?

Mr. LIND.—Yes. Perhaps Col. Greene remembers, or can find it.

Q. Do you recall, Colonel? Look at it and see if you can get it.

A. I don't think there was any recommendation with reference to the cases now under consideration.

Mr. McCOURT.—Are you sure the Secretary's decision states it?

(Testimony of A. R. Greene.)

Mr. LIND.—I am not sure, but that is my recollection.

Mr. McCOURT.—I have a memorandum here, made by you, Colonel, in which you said your recommendations were in relation to township 8 South of 9 West.

A. Well, that is over in the Siletz country, isn't it?

Q. Yes.

A. I find here I made a specific recommendation with reference to some lands in the Siltez country. I was just reading it. I do not find anything further as applying to the cases involved in this suit. I went from there to several other cases, and wound up in the string of alleged fraudulent surveys in the Siltez country.

Q. Is this a copy, or the sheet that you sent with it describing **[927—845]** the lands?

A. Yes, sir. Yes, this is a blank I had prepared for the purpose, and contains a list of the entrymen and the record, as I took them from the books at the County Recorder's Office at Albany.

Mr. McCOURT.—Do you want that to go in with it?

Mr. LIND.—It encumbers the record.

Mr. McCOURT.—The record may show that the list mentioned as sent in by Colonel Greene is list of names of entrymen, number of entrymen, date made, and date when proof was made, and the date of the conveyances, both mortgages and deeds.

Mr. LIND.—In this suit and in the other?

Mr. McCOURT.—Yes, in this suit and in 3319.

(Testimony of A. R. Greene.)

And also other lands not involved.

Mr. LIND.—And it is the same report that is referred to in the Secretary's decision later on.

Cross-examination.

(Questions by Mr. LIND.)

Colonel, you reported direct to the Secretary of the Interior? A. Yes, sir.

Q. Not by way of the General Land Office?

A. No, sir.

Q. You were in a sense the personal representative of Secretary Hitchcock? A. Yes, sir.

Q. Where did you get your data for the statements contained in the report just read into the record? I mean aside from those that you obtained from the county records?

A. A part of the information was obtained from officers **[928—846]** in the courthouse, and a part from citizens of Albany, and a part from citizens in Roseburg and Oregon City.

Q. Did you at that time know Mr. Stratford, a Special Agent in the field here?

A. Only by reputation. I think I never had met him. Afterwards I met him, and he said he knew me, but I didn't recall when I had ever met him.

Witness excused. **[929—847]**

U. S. Exhibit No. 155.

(Govt. Exhibit—59.)

Linn Co.

THIS INDENTURE, Made this 4th day of June, in the year of our Lord one thousand nine hundred and six, between Charles A. Smith and Johanna A. Smith, his wife, of the County of Hennepin and State

of Minnesota, parties of the first part, and ———— Linn and Lane Timber Company, a corporation, of the County of Hennepin and State of Minnesota, party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of $80,000.00 Dollars, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns, Forever, all the tracts or parcels of land lying and being in the County of Linn and State of Oregon, described as follows, to-wit:

All of Section numbered Sixteen (16), the Northeast quarter (N. E. ¼) the Northeast quarter of the Northwest quarter (N. E. N. W.) the South Half of the Northwest quarter (S. ½ N. W.) and the South Half (S. ½) of Section Thirty-six (36), in Township Twelve (12) South, Range Three (3) East of Willamette Principal Meridian.

All of Section numbered Thirty-six (36) in Township Twelve (12) South, Range Four (4) East of Willamette Meridian.

The Northeast quarter (N. E. ¼) the North Half of the Southwest quarter (N. ½ S. W.) the Southwest quarter *od* the Southwest quarter (S. W. S. W.) and the Northwest quarter of the Southeast quarter (N. W. S. E.) of Section Ten (10), the North Half of the Southwest quarter (N. ½ S. W.) of Section Sixteen (16), in Township Thirteen (13) South, Range One (1) **[930]** East of Willamette Principal Meridian.

The Southwest quarter (S. W. 1/4) of Section Four (4), the South Half of the Northeast quarter (S. 1/2 N. E.) and the North Half of the Southeast quarter (N. 1/2 S. E.) of Section Six (6), the North Half of the North Half (N. 1/2 N. 1/2) the Southwest quarter of the Northwest quarter (S. W. N. W.) and the East Half of the Southeast quarter (E. 1/2 S. E.) of Section Eight (8), the North Half of the Northeast quarter (N. 1/2 N. E.) the Southwest quarter of the Northeast quarter (S. W. N. E.) the North Half of the Northwest quarter (N. 1/2 N. W.) the Southeast quarter of the Northwest quarter (S. E. N. W.) the North Half of the Southwest quarter (N. 1/2 S. W.) and the Southeast quarter (S. E. 1/4) of Section Fourteen (14), the North Half of the North Half (N. 1/2 N. 1/2) of Section Twenty (20), the Southwest quarter of the Southwest quarter (S. W. S. W.) the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Twenty-six (26), the West Half of the Northeast quarter (W. 1/2 N. E.) the East Half of the Northwest quarter (E. 1/2 N. W.) the Northeast quarter of the Southwest quarter (N. E. S. W.) and the West Half of the South east quarter (W. 1/2 S. E.) of Section Twenty-eight (28), the Northeast quarter (N. E. 1/4) of Section Thirty (30), the West Half of the Northwest quarter (W. 1/2 N. W.) and the North Half of the Southwest quarter (N. 1/2 S. W.) of Section Thirty-two (32), the Southwest quarter (S. W. 1/4) and the South Half of the Southeast quarter (S. 1/2 S. E.) of Section Thirty-four (34), and the Northeast quarter (N. E. 1/4) of Section Thirty-six (36) in Township Thirteen (13) South, Range Two (2) East of Wil-

lamette Meridian.

The Northeast quarter (N. E. ¼) the West Half of the Northwest quarter (W. ½ N. W.) the Southeast quarter of the Northwest quarter (S. E. N. W.) the West Half of the Southwest quarter (W. ½ S. W.) the Southeast quarter of the Southwest quarter (S. E. S. W.), the Northeast quarter of the Southeast quarter (N. E. S. E.) and the South Half of the Southeast quarter (S. ½ S. E.) of Section Two (2), the Northeast **[931]** quarter of the Southeast quarter (N. E. S. E.), the South Half of the Southeast quarter of Section Four (4), the Northwest quarter of the Northeast quarter (N. W. N. E.), the Southeast quarter of the Northeast quarter (S. E. N. E.), the Southeast quarter of the Northwest quarter (S. E. N. W.), the Northeast quarter of the Southwest quarter (N. E. S. W.), the South Half of the Southwest quarter (S. ½ S. W.), the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Eight (8), the Southwest quarter of the Northwest quarter (S. W. N. W.) and the West Half of the Southwest quarter (W. ½ S. W.) of Section Nine (9), the North Half of the Northeast quarter (N. ½ N. E.) the East Half of the Northwest quarter (E. ½ N. W.) the Southwest quarter (S. W. ¼) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Ten (10), the North Half of the Northeast quarter (N. ½ N. E.), the East Half of the Northwest quarter (E. ½ N. W.) and the Northeast quarter of the Southwest quarter (N. E. S. W.) of Section Twelve (12), the North Half (N. ½) the North Half of the South Half (N. ½ S. ½) and the South Half of the Southwest quarter (S.

½ S. W.) of Section Sixteen (16), the West Half of the Northeast quarter (W. ½ N. E.) the Northeast quarter of the Northwest quarter (N. E. N. W.) the South Half of the Northwest quarter (S. ½ N. W.) and the Northwest quarter of the Southwest quarter (N. W. S. W.) of Section Eighteen (18), the Southwest quarter of the Northwest quarter (S. W. N. W.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Thirty-four (34) in Township Thirteen (13) South, Range Three (3) East of Willamette Meridian.

Lots One (1), Two (2), Three (3) and Four (4), the Southeast quarter of the Northeast quarter (S. E. N. E.), the Southwest quarter (S. W. ¼) the Northeast quarter of the Southeast quarter (N. E. S. E.) and the South Half of the Southeast quarter (S. ½ S. E.) of Section One (1), all of Section Two (2), the West Half (W. ½) of Section Six (6), the Southeast quarter of the Southwest quarter (S. E. S. W.) the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Eight (8), the North Half of **[932]** the Northeast quarter (N. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E.) the Northeast quarter of the Northwest quarter (N. E. N. W.) and the South Half of the South Half (S. ½ S. ½) of Section Ten (10), the East Half of the East Half (E. ½ E. ½) and the Northwest quarter (N. W. ¼) of Section Twelve (12), the Northeast quarter of the Southwest quarter (N. E. S. W.) the North Half of the Southeast quarter (N. ½ S. E.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section

Thirteen (13), the Northwest quarter (N. W. ¼) of Section Fourteen (14), all of Section Sixteen (16), the Northeast quarter (N. E. ¼) of Section Twenty (20), the Northwest quarter (N. W. ¼) of Section Twenty-one (21), the North Half of the North Half (N. ½ N. ½) of Section Twenty-two (22), the Northeast quarter of the Northwest quarter (N. E. N. W.), the South Half of the Northwest quarter (S. ½ N. W.) and the Northwest quarter of the Southwest quarter (N. W. S. W.) of Section Twenty-three (23) in Township Thirteen (13) South, Range Four (4), East, W. M.

Lots Three (3) and Four (4), the East half of the Southwest quarter (E. ½ S. W.) the West half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Two (2), the Southwest quarter of the Northwest quarter (S. W. N. W.) of Section Twelve (12), the North Half of the Northeast quarter (N. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E.) and the North Half of the Southeast quarter (N. ½ S. E.) of Section Fourteen (14), the Southwest quarter of the Northwest quarter (S. W. N. W.) of Section Nineteen (19), the Northwest quarter (N. W. ¼) and the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the Southeast quarter (S. E. ¼) of Section Twenty-four (24), the Northeast quarter of the Northeast quarter (N. E. N. E.) the West Half of the Northeast quarter (W. ½ N. E.), and the Southwest quarter (S. W. ¼) of Section Twenty-six (26), in Township Fourteen (14) South Range One (1) East of Willamette Meridian.

The Northeast quarter (N. E. ¼) the North Half of the Northwest **[933]** quarter (N. ½ N. W.) the Southwest quarter of the Northwest quarter (S. W. N. W.) and the Northwest quarter of the Southwest quarter (N. W. S. W.) of Section Four (4), Lots One (1), Two (2) Three (3), the Southeast quarter of the Northwest quarter (S. E. N. W.) Lots Six (6), Seven (7), the Southeast quarter of the Southwest quarter (S. E. S. W.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Six (6), the Northwest quarter of the Northeast quarter (N. W. N. E.) and the West Half of the Southwest quarter (W. ½ S. W.) of Section Eight (8), lot Three (3) of Section Ten (10), Lots One (1) and Two (2), the South Half of the Northeast quarter (S. ½ N. E.) Lots Three (3) and Four (4), the Southeast quarter of the Northwest quarter (S. E. N. W.) and the North Half of the Southeast quarter (N. ½ S. E.) of Section Twelve (12), the East Half of the Southeast quarter (E. ½ S. E.) of Section Fourteen (14), Lots Three (3), and Four (4), the Southwest quarter of the Northwest quarter (S. W. N. W.) and the South Half of the South Half (S. ½ S. ½) of Section Sixteen (16), the Northeast quarter of the Southwest quarter (N. E. S. W.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Eighteen (18), Lots One (1), Two (2) and the South Half of the Northeast quarter (S. ½ N. E.), lots Three (3), Four (4), and the South Half of the Northwest quarter— (S. ½ N. W.) the North Half of the Southwest quarter (N. ½ S. W.) and the Southwest quarter of the Southwest quarter (S. W. S. W.) of

Section Twenty (20), the North Half of the Northeast quarter (N. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E) the Northwest quarter (N. W. ¼) and the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the South Half (S. ½) of Section Twenty-four (24), all of Section Twenty-six (26) the North Half (N. ½) and the Southeast quarter (S. E. ¼) of Section Twenty-eight (28), the Northeast quarter (N. E. ¼) and the South Half (S. ½) of Section Thirty (30), the West Half (W. ½) and the Southeast quarter (S. E. ¼) of Section Thirty-two (32), the Southwest quarter (S. W. ¼) of Section Thirty-four (34) in Township Fourteen (14) South, Range Two (2) East of Willamette Meridian. **[934]**

Lot Four (4), the South Half of the Northwest quarter (S. ½ N. W.) and the East Half of the Southeast quarter (E. ½ S. E.) of Section Two (2), Lot Two (2) and the South Half of the Northeast quarter (S. ½ N. E.) Lots Three (3) and Four (4) and the South Half of the Northwest quarter (S. ½ N. W.) the West Half of the Southwest quarter (W. ½ S. W.), the Southeast quarter of the Southwest quarter (S. E. S. W.) and the Southeast quarter (S. E. ¼) of Section Four (4), Lot One (1), the South Half of the Northeast quarter (S. ½ N. E.) Lots Four (4) Five (5), the Southeast quarter of the Northwest quarter (S. E. N. W.) the Northeast quarter of the Southwest quarter (N. E. S. W.) Lots Six (6), Seven (7), the Northeast quarter of the Southeast quarter (N. E. S. E.) and the South Half of the Southeast quarter (S. ½ S. E.) of Section Six (6), the Southwest quarter of the Northeast quarter (S. W. N. E.) the West Half of the Northwest quar-

ter (W. ½ N. W.) the Southeast quarter of the Northwest quarter (S. E. N. W.) the North Half of the Southwest quarter (N. ½ S. W.) and the Southwest quarter of the Southwest quarter (S. W. S. W.) and the Southeast quarter (S. E. ¼) of Section Eight (8), all of Section Ten (10), the Northeast quarter (N. E. ¼) the Northwest quarter of the Southwest quarter (N. W. S. W.) the South Half of the Southwest quarter (S. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Eleven (11), the South Half of the Northeast quarter (S. ½ N. E.) the West Half (W. ½) the Northeast quarter of the Southeast quarter (N. E. S. E.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Twelve (12), all of Section Fourteen (14), all of Section Sixteen (16), the North Half of the Northeast quarter (N. ½ N. E.) and the Northwest quarter of the Northwest quarter (N. W. N. W.) of Section Seventeen (17), the East Half (E. ½) and Lot Four (4) of Section Eighteen (18), the North Half (N. ½) and the Southwest quarter (S. W. ¼) of Section Twenty (20), the Northwest quarter (N. W. ¼) and the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the West Half (W. ½) of Section Twenty-four (24), the Southeast quarter (S. E. ¼) of Section Twenty-six (26), the West Half (W. ½) of Section Twenty-eight (28), the Northeast quarter (N. E. ¼) of Section Thirty-one **[935]** (31) all of Section Thirty-four (34), all of Section Thirty-five (35) and all of Section Thirty-six (36) in Township Fourteen (14) South Range Three (3) East of Willamette Meridian.

The Southeast quarter of the Southeast quarter

(S. E. S. E.) of Section Seven (7), the North Half of the Southwest quarter (N. ½ S. W.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Eight (8), the South Half of the Northwest quarter (S. ½ N. W.) of Section Fifteen (15), all of Section Sixteen (16), the Northeast quarter of the Southeast quarter (N. E. S. E.) of Section Seventeen (17), the Southeast quarter of the Northeast quarter (S. E. N. E.) lots Three (3) and Four (4) the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Eighteen (18), the Northeast quarter of the Southwest quarter (N. E. S. W.) and the South Half of the South Half (S. ½ S. ½) of Section Twenty (20), the West Half of the Northeast quarter (W. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E.) the West Half (W. ½) the North Half of the Southeast quarter (N. ½ S. E.) of Section Twenty-two (22), the West Half of the Northeast quarter (W. ½ N. E.) the Northwest quarter (N. W. ¼) the Northwest quarter of the Southwest quarter (N. W. S. W.) the Southeast quarter of the Southwest quarter (S. E. S. W.) and the Southeast quarter (S. E. ¼) of Section Twenty-four (24), the North Half of the Northeast quarter (N. ½ N. E.) the Northeast quarter of the Northeast quarter (N. E. N. W.) of Section Twenty-five (25), the Northwest quarter of the Northwest quarter (N. W. N. W.) of Section Twenty-seven (27), the North Half of the Northeast quarter (N. ½ N. E.) the Southwest quarter of the Northeast quarter (S. W. N. E.) the Northwest quarter (N. W. ¼) the North Half of the Southwest quar-

ter (N. ½ S. W.) the North Half of the Southeast quarter (N. ½ S. E.) and the Southwest quarter of the Southeast quarter (S. W. S. E.), of Section Twenty-eight (28), the Northeast quarter of the Northeast quarter (N. E. N. E.) the South Half of the Northeast quarter (S. ½ N. E.) the West Half (W. ½) and the West Half of the Southeast quarter (W. ½ S. E.) of Section Twenty-nine (29), **[936]** Lots One (1), Two (2), Three (3), Four (4), and the East Half (E. ½) of Section Thirty (30), Lots One (1) Two (2) Three (3) and Four (4) and the East Half (E. ½) of Section Thirty-one (31), the Northwest quarter of the Northeast quarter (N. W. N. E.) and the West Half (W. ½) of Section Thirty-two (32) in Township Fourteen (14) South, Range Four (4) East of Willamette Meridian.

Lots One (1) Two (2) Three (3) Four (4), Five (5), Six (6), Seven (7), Eight (8), Nine (9) Ten (10), Eleven (11) Twelve (12) Thirteen (13) Fourteen (14), Fifteen (15), Sixteen (16) and the South Half (S. ½) of Section One (1), Lots one (1) Two (2) Three (3), Four (4) Five (5) Six (6) Seven (7) Eight (8) Nine (9) Ten (10), Eleven (11) Twelve (12), Thirteen (13) and Sixteen (16) and the West Half of the Southwest quarter (W. ½ S. W.) the Southeast quarter of the Southwest quarter (S. E. S. W.) and the South Half of the Southeast quarter (S. ½ S. E.) of Section Two (2), Lots One (1) Two (2), Three (3), Four (4), Five (5), Six (6) Seven (7) Eight (8), Nine (9) Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), and Sixteen (16), and the South Half (S. ½) of Section Three (3), Lots One (1) Two (2) Three

(3), Four (4) Five (5) Six (6) Seven (7) Eight (8) Nine (9) Ten (10), Eleven (11) Twelve (12), Thirteen (13), Fourteen (14) Fifteen (15) Sixteen (16) and the South Half (S. ½) of Section Four (4), Lots One (1), Two (2), Three (3), Four (4), Five (5), Six (6), Seven (7) Eight (8) Nine (9) Ten (10), Eleven (11), Twelve (12) Thirteen (13), Fourteen (14), Fifteen (15) Sixteen (16) and the South Half (S. ½) of Section Five (5), Lots One (1) Two (2), Three (3) Four (4) Five (5) Six (6) Seven (7) Eight (8) Nine (9), Ten (10), Eleven (11), Twelve (12) Thirteen (13) Fourteen (14) the East Half of the Southwest quarter (E. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Six (6), all of Section Eight (8), all of Section Nine (9), all of Section Ten (10), all of Section Eleven (11), all of Section Twelve (12), all of Section Thirteen (13), **[937]** all of Section Fourteen (14), all of Section Fifteen (15) the East Half (E. ½) of Section Seventeen (17) and all of Section Eighteen (18), in Township Fifteen (15) South Range Three (3) East of Willamette Med. containing 41967.40 acres more or less according to the Government Survey thereof.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second part its successors and assigns, FOREVER.

IN TESTIMONY WHEREOF, the said parties of the first part have hereunto set their hands and

seals the day and year last above written.

CHARLES A. SMITH. [Seal]
JOHANNA A. SMITH. [Seal]
_____ [Seal]
_____ [Seal]

Signed, sealed and delivered in presence of
ETHEL STEELE.
CHARLES L. TRABERT.

State of Minnesota,
County of Hennepin,—ss.

This certifies that on this 4th day of June, 1906, before me, the undersigned Charles L. Trabert, a notary public in and for said county and State, personally appeared the within named Charles A. Smith and Johanna A. Smith, his wife, to me personally known to be the individuals described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my seal the day and year in this certificate first above written.

[Seal] CHARLES L. TRABERT,
Notary Public in and the County of Hennepin, and State of Minnesota.

My commission expires 30th day of October, 1909.

Endorsed:

Compared 7939 Indexed

DEED.

C. A. Smith et ux to
Linn & Lane Timber Co.
Linn County, Oregon.

12–3 & 4	E.
13–1, 2, 3, & 4	E.
14–1, 2, 3, & 4	E.
15–3	E.

(1)

State of Oregon,
County of Linn,—ss.

I hereby certify that the within was received and duly recorded by me in Linn County Records, Book of ——— Vol. 87 Page 394 on the 9″ day of Sept. 1908 at 8–12 o'clock A. M.

GRANT FROMAN,
Recorder of Linn County, Oregon.
By ———————,
Deputy.

Filed May 10, 1910. G. H. Marsh, Clerk.

[939]

U. S. Exhibit No. 157.

(Govt. Ex. 61.)

THIS INDENTURE, Made this 28th day of May in the year of our Lord one thousand nine hundred and seven (1907) between Charles J. Swanson and Christine Swanson, his wife, of the County of Hennepin and State of Minnesota, parties of the first part, and the Linn and Lane Timber Company a corporation organized and existing under the laws

of the State of Minnesota, party of the second part.

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of Ten 00/100 Dollars to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns Forever, an undivided one-fourth interest in a tract or parcel of land, lying and being in the County of Linn and State of Oregon, and described as follows, to-wit:

The Northeast quarter of the Southwest quarter (N. E. S. W.) the South Half of the Southwest quarter (S. ½ S. W.) and the Northwest quarter of the Southeast quarter (N. W. S. E.) of Section Ten (10), in Township Thirteen (13) South Range One (1) East of Willamette Meridian.

The North Half of the Northwest quarter (N. ½ N. W.) the East Half of the Southwest quarter (E ½ S. W.) the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Two (2), the Southwest quarter of the Northwest quarter (S W. N. W.) of Section Twelve (12), the North Half of the Northeast quarter (N. ½ N. E.) the Southeast quarter of the Northeast quarter (S. E. N. E.) and the North Half of the Southeast quarter (N ½ S. E.) of Section Fourteen (14), the Northwest quarter (N. W. ¼) the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the North Half of the Southeast quarter (N. ½ S. E.) of Section Twenty-four (24), and the Southwest quarter (S. W ¼) of Section Twenty-six (26) in Township

[940] Fourteen (14) South Range One (1) East of Willamette Meridian.

The North East quarter (N. E.) of Section Eighteen (18), Township Twenty-three (23), S. Range One (1) E.

The South West quarter (S. W.) of Section Four (4) the North half of the North East quarter (N. ½ N. E.), the North half of the North West quarter (N. ½ N. W.) the South West quarter of the North West quarter (S. W. N. W.) and the East half of the South East quarter (E. ½ S. E.) of Section Eight (8), the South East quarter (S. E.) of Section Fourteen (14), the North Half of the North Half (N. ½ N. ½) of Section Twenty (20) the North East quarter (N. E. ¼) of Section Thirty (30) and the South West quarter (S. W.) of Section Thirty-four (34), all being in Township Thirteen (13) S. Range Two (2) E.

The North West quarter of the South West quarter (N. W. S. W.) of Section Four (4) the East half of the North West quarter (E. ½ N. W.) of Section Six (6), the North West quarter of the North East quarter (N. W. N. E.) and the West half of the South West quarter (W. ½ S. W.) of Section Eight (8) the North East quarter (N. E.) the East half of the North West quarter (E. ½ N. W.) the North half of the South East (N. ½ S. E.) of Section Twelve (12) and the North West quarter of the North *of the North* East quarter (N. *W. N.* E.) the North half of the North West quarter (N. ½ N. W.) the South East quarter of the North West quarter (S. E. N. W.) of Section Tw*n*ety Two (22) and all of Section Twenty Six (26), all being in

Township Fourteen (14) S., Range Two (2) E.

The North East quarter (N. E.) the South East quarter of the North West quarter (S. E. N. W.) the West half of the West half (W. ½ W. ½) the South East quarter of the South West quarter (S. E. S. W.) and the South Half of the South East quarter (S. ½ S. E.) of Section Two (2), the North East of the South West quarter (N. E. S. W.) the South half of the South West quarter (S. ½ S. W.) the South West quarter of the South East quarter (S. W. S. E.) of Section Eight (8) the North half **[941]** of the North East quarter (N. ½ N. E) the East half of the North West quarter (E. ½ N. W.) and the South West quarter (S. W.) of Section Ten (10), the North half of the North East quarter (N. ½ N. E.) ~~the East half of the North West quarter (E. ½ N. W.)~~ the East half of the North West Quarter (E. ½ N. W.) of Section Twelve (12), the North West quarter of the North East quarter (N. W. N. E.) the East half of the North West Quarter (E. ½ N. W.) the South West quarter of the North West quarter (S. W. N. W.) of Section Eighteen (18) the South West quarter of the North West quarter (S. W. N. W.) of Section Thirty-four (34), all being in Township Thirteen (13) S., Range Three (3) E.

All of Section Ten (10) the North half of the North East quarter (N. ½ N. E.) the South East quarter of the North East quarter (S. E. N. E.) the North East quarter (N. ½ N. E.) the South East E. S. E.) the West half of the South West quarter (W. ½ S. W.) the South East quarter of the Southwest quarter (S. E. S. W.) and the South West

quarter of the South East quarter (S. W. S. E.) of Section Eleven (11) The West half (W. ½) of Section Twelve (12) the North West quarter of the North West quarter (N. W. N. W.) of Section Seventeen (17) The North half of the North East quarter (N. ½ N. E.) the South West quarter of the North East quarter (S. W. N. E.) the South East quarter (S. E.) the South East quarter of the North East quarter (S. E. N. E.) of Section Eighteen (18) the South West quarter (S. W.) of Section Twenty (20) all being in Township Fourteen (14) S. Range Three (3) E.

The North East quarter (N. E.) and the south half (S. ½) of Section Two (2), the West Half (W. ½) of Section Six (6) the *the* North West quarter (N. W.) of Section Twelve (12), the North East *quar-* of the Southwest quarter (N. E. S. W.) the South West quarter of the South East quarter (S. W. S. E.) the North half of the South East quarter (N. ½ S. E.) of Section Thirteen (13) the North West quarter (N. W.) of Section Fourteen (14) the North East quarter (N. E.) of Section Twenty (20) the North West quarter (N. W.) of Section Twenty One (21) **[942]** the North half of the North half (N. ½ N. ½) of Section Twenty Two (22), all being in Township Thirteen (13) S. Range Four (4) E.

The South West quarter (S. W.) the South half of the South East quarter (S. ½ S. E.) of Section Eighteen (18) the East half of *of* the South West quarter (E. ½ S. W.) the South Half of the South East quarter (S. ½ S. E.) of Section Twenty (20) the South East quarter of the North East quarter (S. E. N. E.) the west half of the North East quarter

(W. ½ N. E.) the North West quarter (N. W.) and the North half of the South half (N. ½ S. ½) the South West quarter of the South West (S. W. S. W.) of Section Twenty Two (22) the South West quarter of the North East quarter (S. E. N. E.) East half of the North West quarter (E. ½ N. W.) the South West quarter of the North West quarter (S. W. N. W.) of Section Twenty-four (24) the North West quarter of the North West quarter (N. W. N. W.) of Section Twenty-seven (27) the North half of the North East quarter (N. ½ N. E.) the South West quarter of the North East quarter (S. W. N. E.) the North West quarter (N. W.) and the North half of the South half (N. ½ S. ½) of Section Twenty eight (28), the East half of the North East quarter (E. ½ N. E.) the South West quarter of the North East quarter (S. W. N. E.) the North West quarter of the South East quarter (N. W. S. E.) the East half of the West half (E. ½ W. ½) of Section Twenty Nine (29), all being in Township Fourteen (14) S. Range Four (4) E. of Willamette Meridian, Oregon.

TO HAVE AND TO HOLD THE SAME, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the *of the* second part, his heirs and assigns, FOREVER, ~~And the said Charles J. Swanson, party of the first part, for himself and his heirs, executors and administrators, does covenant~~

~~with the said party of the second part, his heirs and assigns, that he is well seized in fee of the lands and premises aforesaid, and has good right to sell and convey the same in manner and form aforesaid, and that the same are free from all~~ [943] ~~incumbrances, and the above bargained and granted lands and premises in the quiet and peaceable possession of the said party of the second part, his heirs, and assigns, against all persons lawfully claiming or to claim the whole or any part thereof, the said party of the first part will WARRANT AND DEFEND.~~

IN TESTIMONY WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

CHARLES J. SWANSON. (Seal)
CHRISTIN SWANSON. (Seal)

Signed, sealed and delivered, in presence of
HENRY EBERT.
A. S. KEYES.

State of Minnesota,
County of Hennepin,—ss.

On this 28th day of May, 1907, before me, a Notary Public, within and for said County, personally appeared Charles J. Swanson and Christine Swanson, his wife, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal] HENRY EBERT,
Notary Public, Hennepin County, Minnesota.
My commission expires Sept. 15, 1907.

Endorsed:

Compared 7938 DEED 3.60 Indexed
Chas. J. Swanson et ux. to Linn and Lane Tbr. Co.
May 28, 1907.
14–1, 2, 3, & 4—E
13–2, 3, & 4—E (2)

State of Oregon,
County of Linn,—ss.

I hereby certify that the within was received and duly recorded by me in Linn County Records, Book of ——— Vol. 87, Page 391, on the 9th day of Sept. 1908, at 8–10 o'clock A. M.

GRANT FROMAN,
Recorder of Linn County, Oregon.
By ————————,
Deputy.

Filed May 10, 1910. G. H. Marsh, Clerk. **[944]**

U. S. Exhibit No. 161.

(Govt. Exhibit 65.)

THIS INDENTURE, Made this 15th day of August in the year of our Lord one thousand nine hundred and seven between Nils O. Werner and Eva C. Werner, his wife of the County of Hennepin and State of Minnesota, parties of the first part, and the Linn and Lane Timber Company of the County of Hennepin and State of Minnesota party of the second part;

WITNESSETH: That the said parties of the first part, in consideration of the sum of One Dollar and other valuable considerations to them in hand paid by the said party of the second part, the receipt

whereof is hereby acknowledged, do hereby Grant, Bargain, Sell, Remise, Release, Quit-claim and Convey unto the said party of the second part, their successors and assigns, Forever, all the following tract or parcel of land lying and being in the County of Linn and State of Oregon, described as follows, to-wit:

The south half of Section Twenty-four (24) township Fourteen (14) South, Range Two (2) east Willamette Meridian; also all of Section Fourteen (14); also the north half of Section Twenty (20); the northwest quarter and the southeast quarter of section twenty-two (22); the west half of Section Twenty-four (24); the southeast quarter of Section Twenty-six (26); the west half of Section Twenty-eight (28); the northeast quarter of Section Thirty-one (31); also all of Sections Thirty-four (34) and Thirty-five (35), in Township Fourteen south, Range three east Willamette meridian, also the northwest quarter of the southeast quarter of Section eighteen (18); the northeast quarter of the northeast quarter of Section Twenty-five (25); the southwest quarter of the southeast quarter of Section Twenty-eight (28); the west half of the west half of Section Twenty-nine (29); all of Sections Thirty (30) and Thirty-one (31); and the west half of Section Thirty-two (32), in Township Fourteen south, range four (4) **[945]** east Willamette meridian.

TO HAVE AND TO HOLD, the above Quit-claimed premises, together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining, to the said party of the second

part, their successors and assigns, Forever.

IN TESTIMONY WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year first above written.

NILS O. WERNER. (Seal)
EVA C. WERNER. (Seal)
_____. (Seal)
_____. (Seal)

Signed, sealed and delivered in presence of
A. V. OSTROM.
CARL H. SOMMER.

State of Minnesota,
County of Hennepin,—ss.

On this 15th day of August in the year one thousand nine hundred and seven, before me, A Notary Public in and for said County and State, personally appeared Nils O. Werner and Eva C. Werner, his wife, to me known to be the persons who are described in, and who executed the foregoing instrument, and acknowledged to me that they executed the same.

[Seal] A. V. OSTROM,
Notary Public Hennepin County, State of Minnesota.
My commission expires Feb. 1st, 1914.

Endorsed:

Compared QUITCLAIM DEED 7937 Indexed
Nils O. Werner and Eva C. Werner, his wife, to Linn and Lane Timber Company 14–1, 2, 3, & 4—E.

OFFICE OF REGISTER OF DEEDS.
County of Linn, Oregon.

I hereby certify that the within Instrument was

filed in this office for record on the 9″ day of Sept. A. D., 1908, at 8:08 o'clock A. M. and was duly recorded in Book 87 of 390 on page ———

GRANT FROMAN,
Registe of Deeds.

Filed May 10, 1910. G. H. Marsh, Clerk. **[946—303]**

U. S. Exhibit No. 162.

UNITED STATES OF AMERICA.
STATE OF OREGON.
Office of the Secretary of State.

I, F. W. BENSON, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify:

That I have carefully compared the annexed copy of a duly authenticated copy of the certificate of incorporation of the LINN AND LANE TIMBER COMPANY, incorporated under the laws of the State of Minnesota, with the original authenticated copy of certificate of incorporation of the said LINN AND LANE TIMBER COMPANY, together with the endorsements thereon, filed in the Office of the Secretary of State of the State of Oregon on the 25th day of June, A. D. 1906, and that the same is a full, true and correct transcript therefrom and of the whole thereof.

I FURTHER CERTIFY that the said LINN AND LANE TIMBER COMPANY has complied with all the provisions of "An Act to provide for the licensing of domestic corporations and foreign corporations, joint stock companies and associations,

etc.," approved February 16, 1903, and has the right, therefore, to transact business in Oregon as required by such statutes providing for the licensing of domestic and foreign corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 23rd day of September, A. D. 1908.

[State Seal] F. W. BENSON,
Secretary of State. [947]

CERTIFICATE OF INCORPORATION
of
LINN AND LANE TIMBER COMPANY.

The undersigned having associated to form a corporation under the General Laws of the State of Minnesota, do hereby certify:

I.

The name of the Corporation shall be LINN AND LANE TIMBER COMPANY; the general nature of its business shall be to buy, hold, and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same; to carry on logging operations, and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber, and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances, for irrigation, and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to de-

velop electric energy and other power for the operation of its works and the transportation of its products, and for sale. The principal place of transacting the business of the corporation shall be at the City of Minneapolis, in the State of Minnesota.

II.

The period of duration of the corporation shall be thirty (30) years.

III.

The names and places of residence of the incorporators are Charles A. Smith, Johanna A. Smith and John Lind, all residing at Minneapolis, Minnesota.

IV.

The management of the corporation shall be vested in a board of directors consisting of three persons, who shall elect from their **[948]** own number a president and a vice president of the corporation, and they shall also elect a secretary and treasurer, who are not required to be directors or stockholders, and they may elect the same person to hold both of said last named offices. The date of the annual meeting at which said board shall be elected shall be the second Tuesday in January in each year. The above named Charles A. Smith, Johanna A. Smith and John Lind, whose addresses are Minneapolis, Minnesota, shall compose the board of directors until the first election of directors in January, 1907.

V.

The amount of capital stock of this corporation is one hundred Thousand Dollars ($100,000). The same shall be paid in as required by the Board of

Directors, and shall be divided into one thousand (1000) shares of one hundred dollars ($100) par value each.

VI.

The highest amount of indebtedness or liability to which the corporation shall at any time be subject is one million dollars ($1,000,000).

IN WITNESS WHEREOF, we have hereunto subscribed our names this 23rd day of May, 1906.

CHARLES A. SMITH.
JOHANNA A. SMITH.
JOHN LIND.
CHARLES L. TRABERT.
L. EUGENE MINAR.

State of Minnesota,
County of Hennepin,—ss.

On this 23rd day of May, 1906, before me personally appeared Charles A. Smith, Johanna A. Smith and John Lind, to me known to be the persons described in and who executed the foregoing Certificate of Incorporation, and acknowledged that they executed the same as their free act and deed.

[L. S.] CHARLES L. TRABERT,
Notary Public, Hennepin County, Minnesota.
My commission expires Oct. 30, 1909. **[949]**

I, Vernon A. Smith, do hereby certify that I am the Secretary of the Linn and Lane Timber Company, a corporation organized under the Laws of the State of Minnesota, with its principal place of business at the City of Minneapolis, in said State of Minnesota; that as such Secretary, I am the legal keeper of the original Certificate or Articles of Incorporation of

said Linn and Lane Timber Company, and that said original Certificate or Articles are now in my custody as such Secretary; that I have compared the foregoing Certificate of Incorporation of said Linn and Lane Timber Company with the said original Certificate or Articles of Incorporation of said Linn and Lane Timber Company, and that the same is a true and correct copy of said original Certificate or Articles, and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Linn and Lane Timber Company at the city of Minneapolis, in said State of Minnesota, this 19 day of June, A. D. 1906.

[Corporate Seal] VERNON A. SMITH,
Secretary of the Linn and Lane Timber Company.

State of Minnesota,
Department of State.

I, P. E. Hanson, the Secretary of State of the State of Minnesota, do hereby certify that Vernon A. Smith, the Secretary of the Linn and Lane Timber Company, whose signature is affixed to the foregoing certificate, has the requisite official knowledge as to whether the certificate or articles of incorporation of said Linn and Lane Timber Company are of a genuine, valid and subsisting character, and that said Vernon A. Smith is the officer of the said Linn and Lane Timber Company who has the legal custody of the original Certificate or Articles of Incorporation of the said Linn and Lane Timber Company, and that the foregoing copy of the Certificate or Articles

of Incorporation of said Linn and Lane Timber Company is duly certified by said **[950]** Vernon A. Smith as the officer of said Company who has the legal custody of said original certificate or Articles of Incorporation.

WITNESS my official signature hereunto subscribed and the seal of the State of Minnesota hereunto affixed this 19 day of June in the year of our Lord one thousand nine hundred and six.

[State Seal] P. E. HANSON,
Secretary of State.

(Endorsed:)

F-341

Certified Copy of Certificate of Incorporation of LINN AND LANE TIMBER COMPANY. Filed in the office of the Secretary of State of the State of Oregon, for Record at Nine o'clock A. M., the 25th day of June, 1906, and recorded on page —— of Book —— of Records of Articles of Incorporation of private corporations.

F. I. DUNBAR,
Secretary of State.

Filed May 10, 1910. G. H. Marsh, Clerk. **[951]**

U. S. Exhibit No. 163.

UNITED STATES OF AMERICA.
STATE OF OREGON.
Office of the Secretary of State.

I, F. W. BENSON, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify:

That I have carefully compared the annexed copy of Power of Attorney from LINN AND LANE TIMBER COMPANY to FRED A. KRIBS, with the original Power of Attorney from LINN AND LANE TIMBER COMPANY to FRED A. KRIBS, together with the endorsements thereon, filed in the Office of the Secretary of State of the State of Oregon on the 25th day of June, A. D. 1906, and that the same is a full, true and correct transcript therefrom and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 23d day of September, A. D. 1908.

[State Seal] F. W. BENSON.
Secretary of State. [952]

POWER OF ATTORNEY—Foreign Corporations.

To be executed, acknowledged and recorded in the office of the Secretary of State by a foreign corporation. Required under the provisions of "An Act to provide for the licensing of domestic corporations and foreign corporations, joint stock companies and associations, etc.," approved February 16, 1903, before transacting business in the State of Oregon.—Sec. 6, p. 44, Laws of 1903.

KNOW ALL MEN BY THESE PRESENTS:

That LINN AND LANE TIMBER COMPANY is a corporation duly organized under and by virtue of the laws of Minnesota, having its principal place of business in the City of Minneapolis, Minnesota, and

a place of business in Portland, in the State of Oregon.

That said LINN AND LANE TIMBER COMPANY has made, constituted and appointed, and does hereby make, constitute and appoint FRED A. KRIBS, a citizen of the United States, and a citizen and resident of the State of Oregon, residing at Portland, Oregon, and whose place of business is at No. 330, Chamber of Commerce Street, its true and lawful Attorney in Fact and authorized Agent for it, and in its name, place and stead to make and accept all service of all writs, processes and summonses in any action, suit or proceeding in any of the courts of the State of Oregon, or United States courts therein, and upon whom all lawful writs, processes and summonses may be served with the same effect as though the company existed in the State of Oregon, requisite and necessary to give competent and complete jurisdiction of the said LINN AND LANE TIMBER COMPANY to any of the said courts;

GIVING AND GRANTING unto said FRED A. KRIBS full power and authority to do and perform every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as the said LINN AND LANE TIMBER COMPANY might or could do if personally present, hereby ratifying and confirming all that the said FRED A. KRIBS shall lawfully do or cause to be done by authority thereof. **[953]**

This Power of Attorney is irrevocable except by the substitution of another qualified person for the one hereby appointed Attorney in Fact.

IN WITNESS WHEREOF, said corporation, in pursuance of a resolution duly adopted by its Board of Directors has caused this instrument to be executed in its name by its President and Secretary and its Corporate Seal to be hereto affixed the 9 day of June, 1906.

(Corporate Seal)

LINN AND LANE TIMBER CO. (Seal)

C. A. SMITH, (Seal)
President.

V. A. SMITH, (Seal)
Secretary.

State of Minnesota,
County of Hennepin,—ss.

THIS CERTIFIES, that on this 9 day of June, 1906, before the undersigned, a Notary Public in and for said county and State personally appeared the within named CHARLES A. SMITH, the President and VERNON A. SMITH, the Secretary of the LINN AND LANE TIMBER COMPANY, the corporation mentioned in and which executed the foregoing Power of Attorney and acknowledged that they executed the same by the authority and on behalf of said LINN AND LANE TIMBER COMPANY pursuant to a resolution of the Board of Directors of said corporation, duly adopted on the 9 day of June, 1906; and VERNON A. SMITH, the Secretary of said LINN AND LANE TIMBER COMPANY, further acknowledged that the Corporate Seal hereinbefore attached and impressed herein is the Corporate Seal of said Corporation and was affixed thereto by him.

IN TESTIMONY WHEREOF, I have hereunto

set my hand and notarial seal this 9th day of June, 1906.

(L. S.) MAUD GOLDSBURY,
Notary Public, Hennepin Co., Minn.

My commission expires April 10, 1908. [954]

(Endorsed:)

F-341. POWER OF ATTORNEY, LINN AND LANE TIMBER CO.
TO
FRED A. KRIBS
Filed,
June 25, 1906.
F. I. DUNBAR,
Secretary of State.
Filed May 10, 1910. G. H. Marsh, Clerk. [955]

U. S. Exhibit No. 168.

UNITED STATES OF AMERICA.
STATE OF OREGON.
Office of the Secretary of State.

I, F. W. BENSON, Secretary of State of the State of Oregon, and Custodian of the Seal of said State, do hereby certify: That I have carefully compared the annexed copy of the declaration of purpose to engage in business in the State of Oregon of the LINN AND LANE TIMBER COMPANY, with the original declaration of purpose to engage in business in the State of Oregon of the said LINN AND LANE TIMBER COMPANY, together with the endorsements thereon, filed in the Office of the Secretary of State of the State of Oregon on the 25th day of June, A. D. 1906, and that the same is a full, true and correct transcript therefrom and of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon.

Done at the Capitol at Salem, Oregon, this 23d day of September, A. D. 1908.

[State Seal] F. W. BENSON,
Secretary of State. **[970]**

DECLARATION—Foreign Corporation.

This declaration must be accompanied by a certified copy of the charter, or articles of incorporation of such foreign corporation, joint stock company or association, certified to by the legal keeper of the original, together with a certificate of the Secretary of State of a State or Territory of the United States, or of the United States Ambassador, Minister, Consul General, Vice Consul or Charge d'Affaires in a foreign country, under whose jurisdiction such corporation, joint stock company or association was formed, that such certifying officer has the requisite official knowledge as to whether such charter or articles of incorporation are of a genuine, valid and subsisting character, and that such character is duly certified by the officer having the legal custody of the original.

Corporation Fee Book No. 1.
No. F-341 Page No. 55.

DECLARATION OF PURPOSE TO ENGAGE IN BUSINESS IN THE STATE OF OREGON.

KNOW ALL MEN BY THESE PRESENTS:

That the LINN AND LANE TIMBER COMPANY, a Corporation, organized and existing under and pursuant to the Laws of Minnesota, having its principal office at Number 410 Andrus Building *Street,* in the City of Minneapolis, Minnesota, hereby makes the following declaration of its desire and purpose to engage in business within the State of Oregon, which declaration is accompanied by a duly authenticated copy of its certificate of incorporation in compliance with the provisions of "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903:

The full name under which it proposes to transact business is

LINN AND LANE TIMBER COMPANY.

The name of the State or Country under whose laws is was organized is State of Minnesota.

The location of its home office is at Number 410 Andrus Bldg., in the City of Minneapolis, State of Minnesota.

The date of its formation or incorporation was the 31st day of May, 1906. **[971]**

The amount of its capital stock is One Hundred Thousand ($100,000) Dollars.

The nature of the pursuit, business, or occupation in which it is authorized to engage is to buy, hold,

and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, to carry on logging operations, and buy, sell, store and transport logs and other forest products for its self and others; to build and operate mills for the manufacture of lumber and other wood and forest products to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale.

Said corporation will commence the transaction of business in the State of Oregon on the 25th day of June, 1906.

The location of the Principal office within the State of Oregon is at Number 330 Chamber of Commerce, in the City of Portland, County of Multnomah.

The name of its Attorney in Fact constituted and appointed in accordance with the provisions of Section 6 of "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903, is Fred A. Kribs, whose business address is at Number 330 Chamber of Commerce, in the City of Portland, in the County of Multnomah.

The names and addresses of its principal officers and of its directors or trustees, are as follows: **[972]**

Names.	Office.	Postoffice Address.
Charles A. Smith,	President and Director,	Minneapolis, Minnesota.
Vernon A. Smith,	Secretary,	Minneapolis, Minn.
Johanna A. Smith,	Vice-President and Director,	Minneapolis, Minn.
Nann A. Smith,	Treasurer,	Minneapolis, Minn.
John Lind,	Director,	Minneapolis, Minn.

The name and residence of its General Agent within the State of Oregon is Fred A. Kribs, Number 330 Chamber of Commerce, in the City of Portland, in the County of Multnomah.

IN WITNESS WHEREOF, said Corporation, in pursuance of a resolution duly adopted by its Board of directors, has caused this declaration to be signed by its President and Secretary, and its Corporate Seal to be affixed, the 9th day of June, 1906.

[Seal]

[Corporate Seal]

LINN & LANE TIMBER CO. [Seal]
C. A. SMITH, President. [Seal]
V. A. SMITH, Secretary. [Seal]

State of Minnesota,
County of Hennepin,—ss.

I, CHARLES A. SMITH, President, and I, VERNON A. SMITH, Secretary of the LINN AND LANE TIMBER COMPANY, being severally duly sworn depose and say, and each for himself says, that I am the President and the Secretary, respectively, of the LINN AND LANE TIMBER COM-

PANY, the corporation mentioned in and which executed the foregoing declaration, and that said declaration, is a full, **[973]** true and correct statement of the matters therein contained according to the best of my information, knowledge and belief.

C. A. SMITH.
V. A. SMITH.

Subscribed and sworn to before me this 9th day of June, 1906.

[Seal] MAUD GOLDSBURY,
Notary Public, Hennepin Co. Minn.

My commission expires April 10, 1908.

State of Minnesota,
County of Hennepin,—ss,

I, VERNON A. SMITH, Secretary of the LINN AND LANE TIMBER COMPANY, being first duly sworn depose and say upon oath that CHARLES A. SMITH, is the President of said corporation, and that the signature affixed to the above and foregoing declaration is the genuine signature of said CHARLES A. SMITH; that the Corporate Seal hereinbefore attached and impressed herein is the Corporate Seal of said corporation, and was affixed thereto by me, and that the foregoing declaration was executed for the LINN AND LANE TIMBER COMPANY by its President and Secretary, pursuant to a resolution of the Board of Directors of said corporation duly adopted on the 9th day of June, 1906, so help me God.

V. A. SMITH.

Subscribed and sworn to before me this 9th day of June, 1906.

[Seal] MAUD GOLDSBURY,
Notary Public, Hennepin Co., Minn.
My commission expires April 10, 1908.

Endorsed:

FILE NO. F-341.

Declaration of LINN AND LANE TIMBER COMPANY, Principal Office 330 Chamber of Commerce, Portland, Ore.

Filed in the office of the Secretary of State of the State of Oregon, for record, at nine o'clock A. M., the 25th day of June, 1906, and recorded at page——, of Book of Records of Declarations of Foreign Corporations.

F. T. DUNBAR,
Secretary of State.

Filed May 10, 1910. G. H. Marsh, Clerk. **[974]**

U. S. Exhibit No. 171.

(Govt. Exhibit 66.)

FIRST NATIONAL BANK.
PAID
Mar. 8, 1901.
ROSEBURG, OREGON.

Roseburg, Oregon, Mch. 8th, 1901. No.——

FIRST NATIONAL BANK OF ROSEBURG,

Pay to
Order
Yourselves, or ~~Order~~ $400.00
Four Hundred and no/100 Dollars.

FRED A. KRIBS.

(Pinned on bottom):

$400.00 No.—— Cop C. A. S. Mch. 8, 1901.

Pay to yourselves Bal. $——

Cy for Stratford land (U. S. Agt.)

Filed May 10, 1910. G. H. Marsh, Clerk. **[975]**

U. S. Exhibit No. 184.

(Govt. Exhibit 56.)

PAID

Feb. 14, 1902.

Roseburg, Oregon.

Roseburg, Oregon, Feb. 13, 1902. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Order

Pay to Mitchell and Tanner or ~~Bearer~~ $500.00

Five Hundred and no/100 Dollars.

FRED A. KRIBS.

(Endorsements):

Mitchell & Tanner,

Douglas County Bank,

Paid Feb. 14, 1902.

Roseburg, Oregon.

Pay to the order of

any Bank or Banker

Merchants National Bank

Feb. 13, 1902.

Portland, Oregon.

R. W. Hoyt, Cashier.

Filed May 10, 1910. G. H. Marsh, Clerk. **[976]**

U. S. Exhibit No. 185.

(Govt. Exhibit 57.)

PAID

Jun. 16, 1902.

Roseburg, Oregon.

Roseburg, Oregon, June 14, 1902. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Order

Pay to Mitchell and Tanner or ~~Bearer~~ $1,000.00

One Thousand and no/100 Dollars.

FRED A. KRIBS.

(Endorsements):

Mitchell & Tanner.

Pay to the order of any

Bank or Banker.

Douglas County Bank,

Roseburg, Ore.

Pay to the order of any

Bank or Banker.

Merchants National Bank,

Jun. 14, 1902,

Portland, Oregon.

R. W. Hoyt, Cashier.

Filed May 10, 1910. G. H. Marsh, Clerk. **[977]**

U. S. Exhibit No. 186.

(Govt. Exhibit 58.)

FIRST NATIONAL BANK.

PAID

Oct. *L6*, 1901.

Roseburg, Oregon.

Roseburg, Oregon, Oct. 15, 1901. No. ——.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to Order

Mitchell and Tanner, or ~~Bearer~~ $600.00

Six Hundred and no/100 Dollars.

FRED A. KRIBS.

(Endorsements):

Mitchell & Tanner.

Douglass County Bank,

F. S. Godfrey, Cashier.

Pay to the order of any

Bank or Banker.

Merchants National Bank,

Oct. 15, 1901,

Portland, Oregon.

R. W. Hoyt, Cashier.

Filed May 10, 1910. G. H. Marsh, Clerk. [978]

Mr. UELAND.—I offer in evidence the minutes of the meeting of the stockholders and directors of the Linn and Lane Timber Company in both cases. I offer it with special reference to the first meeting of Directors held the 9th day of June, 1906; with special reference to the meeting of incorporators held on the same date, and with special reference to the special meeting of stockholders held October 31, 1908.

Mr. McCOURT.—I object to anything that the minutes purports to show subsequent to the making of the Linn and Lane Timber Company a party to this suit.

Mr. UELAND.—That was November 16.

Mr. McCOURT.—That would include it, but I want to make the statement as applying to anything in these minutes subsequent to the filing of the amended bill making the defendant Linn and Lane Timber Company a party, which amended bill was filed November 16, 1908.

Objection overruled; exception taken.

Minutes read into the record as follows: [979—678]

[Minutes of Board of Directors Meeting of Linn and Lane Timber Co.]

The undersigned being the incorporators and first Board of Directors of the Linn and Lane Timber Company and being also the subscribers to all the stock of said corporation, which has been subscribed, each of us having this day subscribed for one share, did hereby mutually agree that the first meeting of the Board of Directors of said corporation shall be held at this time and place, to-wit: At the office of the C. A. Smith Timber Company in the Andrus Building in the City of Minneapolis, on this the 9th day of June, 1906, at the hour of 4 o'clock P. M., for the election of officers of said Board and of said corporation and for the transaction of such other business as may come before the Board of Directors.

C. A. SMITH.
JOHN LIND.
JOHANNA A. SMITH.

The directors having subscribed the foregoing agreement, the first meeting of the Board of Directors was held pursuant thereto at the time and place therein stated, all the directors being present, C. A. Smith acting as chairman of the meeting and John Lind as secretary.

Officers of the Board were elected, each by unanimous vote, as follows: Charles A. Smith, president, Johanna A. Smith, vice-president; Vernon A. Smith, secretary; Nann A. Smith, treasurer.

On motion of Mr. Lind, a disk on which is engraved the words: "Linn & Lane Timber Company Minneapolis, Minn., Corporate Seal," and of which an impression is made on the margin hereof, was adopted by unanimous vote as the seal of **[980—679]** the Company.

(Seal)

On motion of Mr. Smith it was voted that the Secretary of the Company should receive as compensation for his services the sum of $10.00 for each meeting of the Board.

Mr. Smith laid before the Board deeds to the Company of certain timber lands in the State of Oregon, executed by himself and wife, and a proposition to deliver the same to the Company and thereby vest the title to the land therein described in the Company, and accept as a full consideration for the same the entire authorized capital stock of the Company, fully paid up and non-assessable, certificate or certificates for all such stock, except the two shares subscribed by Johanna A. Smith and John Lind, to be issued to him, and the two shares subscribed by Johanna A. Smith and John Lind to be issued to them,

respectively as fully paid. On motion of Mr. Lind, seconded by Johanna A. Smith, the proposition was accepted by unanimous vote, and the President and Secretary were directed to issue and deliver certificates for the entire authorized capital stock of the Company in accordance with the terms thereof.

On motion of Mr. Lind, the President and Secretary were directed, on behalf of the Company to constitute and appoint Fred A. Kribs resident agent of the Company in the State of Oregon, and to do all things necessary to obtain for the Company the right to do business in the State of Oregon, and to pay all fees and charges required for that purpose.

On motion of Mr. Smith, it was voted that, for the time being the principal office of the company be kept at **[981—680]** room No. 411 Andrus Building, Minneapolis, Minnesota.

The meeting thereupon adjourned.

Dated June 9th, 1906.

JOHN LIND.
Secy. Stockholders Meeting.

Attest: VERNON A. SMITH, Sec'y.

Pursuant to notice and the Articles of Incorporation, the Annual Stockholders' meeting of this Company was duly called to order at the Company's office in the Andrus Building, in the City of Minneapolis, on Tuesday, this the 8th day of January, 1907, at which meeting there were present in person all of the stockholders as follows:

C. A. Smith.....998 shares
Johanna A. Smith..... 1 share
Vernon A. Smith..... 1 share.

The President of the Corporation, Mr. C. A.

Smith, acted as Chairman, and the undersigned as Secretary of the Stockholders' meeting.

The minutes of the meeting of June 9th, 1906 were read, and the action of the Directors approved.

The Stockholders thereupon elected by the unanimous vote of the stockholders, Directors for the ensuing year as follows: Charles A. Smith, Johanna A. Smith and Vernon A. Smith.

There being no further business, the stockholders' meeting adjourned.

Dated June 8th, 1907.

VERNON A. SMITH,
Secy. Stockholders' Meeting.

Immediately after the stockholders' meeting, the Board of Directors met, all present, C. A. Smith acting as Chairman, and Vernon A. Smith as Secretary. **[982—681]**

Officers of the Board were elected each by unanimous vote as follows:

Charles A. Smith, President.
Johanna A. Smith, Vice-President.
Vernon A. Smith, Secretary.
Nann A. Smith, Treasurer.

In view of the fact that the corporation had no funds, and did not desire to dispose of any of its lands, Mr. C. A. Smith proposed to advance the money needed to pay the taxes and other necessary expenses from time to time as required, all advances made by him to draw interest at six per cent (6%). This proposition was accepted by the Board.

Board adjourned.

Dated June 8th, 1907.

VERNON A. SMITH,
Secy.

Pursuant to notice and the Articles of Incorporation, the Annual Stockholders' meeting of this Company was duly called to order at the Company's office in the Andrus Building in the City of Minneapolis, on Tuesday, this the 14th day of January, 1908, at which meeting then were present in person all of the stockholders as follows:

Chas. A. Smith.....998 shares.
Johanna A. Smith.....1 share
Vernon A. Smith.....1 share.

The President of the corporation, Mr. C. A. Smith, acted as chairman, and the undersigned as Secretary of the Stockholders' meeting.

The Stockholders thereupon elected by unanimous vote of all the stockholders, Directors for the ensuing **[983—682]** year, as follows:

Charles A. Smith, Johanna A. Smith and Vernon A. Smith.

There being no further business, the stockholders' meeting adjourned.

Dated January 14th, 1908.

VERNON A. SMITH,
Secy. Stockholders' Meeting.

Immediately after the stockholders' meeting, the Board of Directors met, all present, C. A. Smith acting as chairman and Vernon A. Smith as Secretary.

Officers of the Board were elected each by unanimous vote as follows:

Charles A. Smith, President.
Johanna A. Smith, Vice-President.
Vernon A. Smith, Secretary.
Nann A. Smith, Treasurer.

Board adjourned.

Dated January 14th, 1908.

VERNON A. SMITH,
Secy.

Special Stockholders' meeting Oct. 31, 1908.

A special meeting of the stockholders of the company was this day held pursuant to notice duly given, with all the stockholders of the Company present, each stockholder present holding shares in the Company as follows:

C. A. Smith 984 shares (300 held in pledge by the Swedish American National Bank of Minneapolis, and 10 by C. J. Swanson.)

C. J. Johnson..... .....15 shares.

[984—683]

Johanna A. Smith..... 1 share

C. A. Smith, the president of the Company, presided at the meeting. Vernon A. Smith, having ceased to be a stockholder and having presented his resignation as Secretary. C. L. Trabert was elected to act as Secretary. On motion of C. J. Johnson, the following resolution was unanimously adopted:

Whereas C. A. Smith is under obligation to the Swedish American National Bank as maker, endorser or surety upon promissory notes amounting in the aggregate to $337,240.45 and accrued interest; and

Whereas C. J. Johnson is under obligation to said Bank as maker, endorser or surety upon promissory notes amounting in the aggregate to $56,450, the notes upon which said Smith and Johnson are so severally liable to said Bank being identical, however to the extent of $12,500; and

Whereas said Bank as collateral security for the notes upon which said Smith is liable to said Bank now holds bonds of the C. A. Smith Lumber Company of Marshfield, Oregon, of the face value of $400,000, and also 300 shares of the stock of said Smith in this Company; and

Whereas C. A. Smith desires by a partial payment upon one or more notes upon which he is liable as aforesaid, and by substituting the security hereinafter mentioned, to procure from said Bank a release and surrender of the said bonds of the C. A. Smith Lumber Company of Marshfield, so as to use the same or the proceeds thereof in payment of other obligations on his part; and

Whereas said Bank is not willing to surrender said bonds unless more than a majority of the capital stock of this company is pledged to it as security for the payment **[985—684]** to it of the notes on which said Smith and Johnson are respectively liable as aforesaid, in such manner and upon such terms that the stock so pledged may be voted at all the meetings of this company upon all matters pertaining to the business of this Company, and so that the stock so pledged may be represented by a majority of the Board of Directors of this Company and by the executive officers of said Board until the indebtedness for which such stock is pledged is fully paid and satisfied.

Now, Therefore, the consent of the stockholders of this Company is hereby given to said C. A. Smith and said C. J. Johnson assigning and transferring directly to said Bank, or to some person or persons in trust for said Bank, as much of their stock in this Company as they may see fit, as security for their

several, aforesaid obligations to said Bank, and the stockholders of this Company further consent, that such transfer may be made upon such terms that said Bank, or the trustee or trustees holding the same for said Bank, may vote the same at any and all meetings of this Company in any and all matters pertaining to the business of this Company, including the business of selling any property of this Company; and these stockholders hereby further consent that until the indebtedness to secure which any of such stock is or may hereafter be so pledged by said C. A. Smith or C. J. Johnson, is fully paid, the stock securing said indebtedness may be represented upon the Board of Directors of this Company by a majority of the Directors of said Board and by any or all the executive officers of this Company and of said Board, to the end that no indebtedness or liability may be incurred by this Company until the indebtedness for which such stock is or may be [986—685] pledged is fully paid; and the stockholders of this Company hereby consent to any extension of the payment of said indebtedness, and to the taking of any renewal note or notes for the same.

And to induce said Bank to accept such stock of C. A. Smith and C. J. Johnson in lieu of the aforesaid bonds of C. A. Smith Lumber Company of Marshfield, Oregon, as security for the aforesaid notes and any renewal note or notes for the same,

We, the Stockholders of said Linn and Lane Timber Company, do hereby represent to said Bank that this Company is now without indebtedness or liability of any kind or nature whatsoever.

The foregoing resolution having been adopted, the

resignations of Johanna A. Smith and Vernon A. Smith as directors of the Company were laid before the meeting, and on motion of C. J. Johnson both said resignations were accepted. C. A. Smith having transferred one share of his stock in the Company to B. F. Nelson and one share to C. C. Wyman, with a view of carrying out the transaction contemplated by the foregoing resolution, B. F. Nelson was unanimously elected director of the Company for the unexpired term of said Johanna A. Smith, and C. C. Wyman was unanimously elected director of said Company for the unexpired term of Vernon A. Smith.

The meeting thereupon adjourned.

CHARLES L. TRABERT,
Secretary.

C. A. SMITH,
Pres.

Directors' Meeting October 31, 1908.

Upon the adjournment of the special meeting of the **[987—686]** stockholders of this Company, this day held, a meeting of the Board of Directors of the Company was held with all Directors present, namely: C. A. Smith, B. F. Nelson and C. C. Wyman.

The meeting was called to order by C. A. Smith who presided. C. C. Wyman was elected Secretary pro tem. The resignations of C. A. Smith as president, Johanna A. Smith as vice-president, Vernon A. Smith as Secretary and Nann A. Smith as Treasurer were presented to the Board, and on motion of B. F. Nelson, seconded by C. C. Wyman, all four resignations were accepted. On motion of C. A.

Smith, seconded by C. C. Wyman, B. F. Nelson was elected president for the unexpired term of C. A. Smith, resigned. On motion of B. F. Nelson, seconded by C. C. Wyman, C. A. Smith was elected vice-president for the unexpired term of Johanna A. Smith, resigned. On motion of C. A. Smith, seconded by B. F. Nelson, C. C. Wyman was elected secretary for the unexpired term of Vernon A. Smith, resigned, and was also elected treasurer for the unexpired term of Nann A. Smith, resigned.

The meeting thereupon adjourned.

C. C. WYMAN,
Secretary.

Pursuant to notice and the articles of incorporation the annual stockholders' meeting of this Company was duly called to order in the Company's office in the Andrus Bldg., in the city of Minneapolis, Minn., on Tuesday this 12th day of Jan., 1909.

There being no quorum present the meeting was adjourned to meet Jan. 19th, 1909, at one thirty o'clock P. M. in the office of Lind and Ueland, attys. for the corporation.

C. C. WYMAN,
Secty. **[988—687]**

Minneapolis, Minn., Jan. 19–1909.

Pursuant to notice the adjourned meeting of the stockholders of the Linn & Lane Timber Company was duly called to order at the office of Lind & Ueland in the New York Life Bldg., at Minneapolis, Minn., on Tuesday this 19th day of Jan. at one thirty o'clock P. M.

There were present in person and by proxy all of

the stockholders as follows:

C. A. Smith	representing	475 shares
C. J. Johnson	"	15 "
B. F. Nelson and C. C. Wyman as Trustees		510 "

Mr. C. A. Smith was duly elected chairman and the undersigned as secretary of the stockholders meeting.

The minutes of the former meetings in 1908 were read and the actions taken at such meetings were approved.

Upon motion of Mr. C. J. Johnson, B. F. Nelson, C. A. Smith and C. C. Wyman were nominated as Directors for the ensuing year and the secretary was then instructed to cast a ballot of all the stockholders for C. A. Smith, B. F. Nelson and C. C. Wyman as Directors for the ensuing year; thereupon the secretary so cast a ballot and said directors were declared elected.

There being no further business the meeting thereupon adjourned.

C. C. WYMAN,
Secretary of Stockholders' Meeting.

Immediately after the stockholders' meeting, the Board of Directors met, C. C. Wyman and C. A. Smith being present. C. A. Smith acted as chairman and C. C. Wyman as secretary. **[989—688]**

The following officers of the board were elected, each by unanimous vote to serve until their successors were elected and duly qualified, Mr. B. F. Nelson, President, Chas. A. Smith Vice-president, and

C. C. Wyman as Secretary and Treasurer.

There being no further business, upon motion of Mr. Wyman, the meeting was thereupon adjourned.

C. C. WYMAN,
Secretary. **[990—689]**

Mr. UELAND.—I offer in evidence the records of the Linn and Lane Timber Company of its capital stock with special reference to

Stub and Certificate No. 1.
Stub and Certificate No. 2.
Stub and Certificate No. 3.
Stub and Certificate No. 4.
Stub and Certificate No. 5.
Stub and Certificate No. 6.
Stub No. 7.
Stub and Certificate No. 8.
Stub No. 9.
Stub and Certificate No. 10.
Stub No. 11.
Stub and Certificate No. 12.
Stub and Certificate No. 13.
Stub No. 14.
Stub No. 15.
Stub No. 16.
Stub No. 17.

Mr. McCOURT.—I object to the offer by counsel of all the certificates and stubs with the exception of Nos. 1, 2 and 3, for the reason that it is immaterial and irrelevant; that is, all excepting 1, 2 and 3 are irrelevant.

Objection overruled; exception saved.

Mr. UELAND.—We will make up a copy of the information contained on the certificates and stubs,

and put them in the record subject to your approval.

Mr. McCOURT.—Very well. **[991—690]**

The Linn & Lane Timber Company's stock records show issuance and transfer of its capital stock, each share $100.00, as follows:

Certificate No. 1, for 1 share:

Issued to Johanna A. Smith June 11, 1906.

Receipted for by her same date.

Certificate assigned to B. F. Nelson, October 31, 1908.

Cancelled same date.

Certificate No. 2, for 1 share:

Issued to John Lind June 11, 1906.

Receipted for by him same date.

Certificate assigned to Vernon A. Smith, Jan. 8, 1907.

And cancelled same date.

Certificate No. 3, for 998 shares:

Issued to Charles A. Smith, June 11, 1906.

Receipted for by him on same date.

Surrendered and cancelled for re-issue Feb. 14, 1908.

Certificate No. 4 for 1 share:

Issued January 8, 1907, to Vernon A. Smith.

Receipted for by him January 8, 1908.

Same being issued in place of Certificate No. 2 to John Lind.

Certificate assigned to C. A. Smith, Oct. 31, 1908,

And cancelled same date.

Certificate No. 5, for 300 shares:

Issued February 14, 1908, to the Swedish-American National Bank of Minneapolis, in the fol-

lowing language: "This certifies that the Swedish-American National Bank of Minneapolis is the owner of 300 shares of $100.00 each of the capital stock of the Linn & Lane Timber Co., which it holds as collateral security for advances and loans made and to be made to Charles A. Smith, Pledgor."

Certificate receipted for February 14, 1908, by N. O. Werner, President.

Certificate issued in part in place of Certificate No. 3 for 998 shares to Charles A. Smith.

Certificate transferred in blank by the Swedish-American National Bank of Minneapolis, per J. A. Latta, Vice-President and E. L. Mattson, Cashier.

And cancelled April 6, 1909. **[992—691]**

Certificate No. 6, for 15 shares:

Issued February 15, 1908, to Charles J. Johnson.

Receipted for by him same date.

Issued in part in place of original Certificate No. 3 for 998 shares, to Charles A. Smith.

Certificate assigned by C. J. Johnson to Swedish-American National Bank of Minneapolis, Oct. 31, 1908. Assignment contains this languags: "This transfer is made to secure obligations of C. J. Johnson and C. A. Smith described in the resolution of the stockholders this day adopted."

Certificate cancelled October 31, 1908.

Certificate No. 7, for 10 shares:

Issued February 27, 1908, to Charles A. Smith.

Receipted for by him same date.

Assigned to Charles J. Swanson as collateral.

Certificate issued in part in place of original certificate No. 3 for 998 shares to Charles A. Smith.

Certificate No. 8, for 673 shares:

Issued to Charles A. Smith, February 28, 1908.

Receipted for by him same date.

Issued in part in place of original certificate No. 3 for 998 shares to Charles A. Smith.

208 shares included in certificate assigned by C. A. Smith to Swedish-American National Bank of Minneapolis, October 31, 1908, the assignment containing this language: "This transfer is made to secure the obligation of C. A. Smith and C. J. Johnson described in the resolution of the stockholders this day adopted."

Certificate cancelled October 31, 1908.

Certificate No. 9 for 1 share:

Issued October 31, 1908, to B. F. Nelson, Trustee.

Receipted for by him same date.

Issued in place of original certificate No. 1, for one share to Johanna A. Smith.

Certificate No. 10 for 1 share:

Issued October 31, 1908, to C. A. Smith.

Receipted for by him same date.

Issued in place of Certificate No. 4 for 1 share to Vernon A. Smith.

Certificate assigned by C. A. Smith to C. C. Wyman, October 31, 1908, and cancelled the same date.

Certificate No. 11, for 1 share:

Issued October 31, 1908, to C. C. Wyman, Trustee.

Receipted for by him same date.

Issued in place of Certificate No. 10 for 1 share to C. A. Smith. **[993—692]**

Certificate No. 12, for 15 shares:

Issued October 31, 1908, to Swedish-American National Bank of Minneapolis.

Certificate contains this language: "This certificate is held as collateral security, being pledged by C. J. Johnson."

Certificate issued in place of Certificate No. 6, for 15 shares to C. J. Johnson.

Certificate receipted for October 31, 1908, by N. O. Werner, President.

Certificate assigned in blank by the Swedish-American National Bank of Minneapolis, by J. A. Latta, Vice-President; E. L. Mattson, Cashier.

And cancelled April 6, 1909.

Certificate No. 13, for 208 shares:

Issued October 31, 1908, to Swedish-American National Bank, Minneapolis.

Certificate contains this language: "This certificate is held as collateral security, being pledged by C. A. Smith."

Certificate receipted for October 31, 1908, by N. O. Werner, President.

Certificate issued in part in place of Certificate No. 8 for 673 shares to C. A. Smith.

Certificate assigned in blank by the Swedish-American National Bank of Minneapolis by J. A. Latta, Vice-President; E. L. Mattson, Cashier.

Certificate cancelled April 6, 1909.

Certificate No. 14 for 465 shares:

Issued October 31, 1908, to C. A. Smith.

Receipted for by him on same date.

Issued in part in place of Certificate No. 8, for 673 shares, to Charles A. Smith.

Certificate No. 15, for 300 shares:

Issued April 6, 1909, to the Northwestern National Bank of Minneapolis, Minnesota, "as Collateral account of Charles A. Smith."

Transferred from the Swedish-American National Bank of Minneapolis.

Issued in place of Certificate No. 5 for 300 shares to the S.—A. National Bank of Minneapolis.

Certificate receipted for by J. A. Latts, Vice-President of date April 6, 1909.

Certificate No. 16, for 15 shares:

Issued April 6, 1909, to Northwestern National Bank of Minneapolis, Minnesota.

Certificate stub contains this language: "This certificate is held as collateral security being pledged by C. J. Johnson."

Transferred from the Swedish-American National Bank of Minneapolis. **[994—693]**

Certificate No. 16 (continued):

Issued in place of Certificate No. 12 for 15 shares to the Swedish-American National Bank of Minneapolis.

Certificate receipted for by J. A. Latts, Vice-President, April 6, 1909.

Certificate No. 17, for 208 shares:

Issued April 6, 1909, to the Northwestern National Bank of Minneapolis, Minnesota.

Certificate stub contains this language: "This certificate is held as collateral security, being

pledged by C. A. Smith. From whom transferred: The Swedish-American National Bank of Minneapolis."

Certificate issued in place of Certificate No. 13 for 208 shares, to the Swedish-American National Bank of Minneapolis.

Certificate receipted for by J. A. Latta, Vive-President, April 6, 1909. **[995—694]**

Mr. LIND.—Will the District Attorney admit that the Linn and Lane Timber Company complied with the laws of the State of Oregon and paid its corporate fee during the years of its existence, up to and including 1909?

Mr. McCOURT.—Yes, I will admit that.

Mr. UELAND.—The defendants offer in evidence this document dated October 31, 1908, it being a document showing a pledge of a majority of the stock of the Linn and Lane Timber Company to the Swedish-American National Bank of Minneapolis, to secure certain large indebtedness on the part of the stockholders.

Mr. McCOURT.—Objected to as immaterial for the same reasons as given with reference to the objection to the admission of stock certificates. That it is shown by the pleadings and the records themselves, that at the organization of this corporation or shortly thereafter there were subscribed and issued all of the capital stock of the company, one share to John Lind, one to Johanna A. Smith, and 998 shares to C. A. Smith. Any subsequent division or transfer of the stock could in no way affect the notice that might be brought to this corporation of prior fraud relating

to the title to the lands which it secured, and on account of which it is made a defendant here now.

Objection overruled; exception saved.

Marked Defendants' Exhibit "I."

Mr. McCOURT.—While I don't wish to require any identification for these signatures upon this instrument, I don't want to admit it without an opportunity to ascertain further whether it was actually made when it purports to be. If you tell me that it was executed the 31st day of October—

Mr. UELAND.—If you will take my word for it; I don't ask you to do that.

Mr. McCOURT.—You say it was executed October 31st?

Mr. UELAND.—I do. [996—695]

Mr. McCOURT.—Then it can be admitted subject to the objections previously made?

In relation to the minutes of the corporation that you have introduced, I want to make a similar statement in regard to that same date—October 31st, to know whether or not they were made at that time.

Mr. UELAND.—I give my word as to that, if that satisfies you.

Mr. McCOURT.—I am satisfied.

Mr. UELAND.—Before I offer this next document in evidence, I want to state to the Court that in the answers it is averred that after a majority of the stock of this company had been pledged as shown by the minutes and by the documents just received, the Northwestern Bank of Minneapolis, acquired by purchase the note secured and the property pledged. The fact of it was that in November, 1908, the Swed-

ish-American National Bank consolidated in a manner with the Northwestern National Bank, so that all of its assets went from the Swedish-American to the Northwestern. This document is offered for the purpose of showing such transfer and that the Northwestern National Bank now holds the stock and is the owner of the indebtedness for which the stock was pledged. This document is dated subsequent to the commencement of this suit.

Mr. McCOURT.—The same objection is urged to this as was made to the admission of stock, occurring subsequent to the formation of the corporation.

You know this to have been made when it purports to have been made?

Mr. UELAND.—I know of the transfer I speak of, but I was not present when that document was made and I didn't make it.

Mr. McCOURT.—You know it was made about that time? **[997—696]**

Mr. UELAND.—I have no moral doubt about it.

Mr. McCOURT.—No requirement to be made of the proof of its execution beyond what it shows on its face.

Marked Defendants' Exhibit "J."

Mr. UELAND.—May it please the Court, "Defendants' Exhibits 'C' and 'D' for Identification" in case No. 3320, purport to be two deeds from C. A. Smith and wife to the Linn and Lane Timber Company, one for lands in Linn County, and one for lands in Douglas County in this State. Both bear date the 4th day of June, 1906. The same as the deed as to which some inquiry has been made. At some time or other we

will offer these two deeds to show that they, together with the deed of June 4, 1906, already in evidence, constitute the conveyance for which the stock of the company was issued under the resolution of the stockholders of June 9, 1906.

Mr. LIND.—Not as substantive evidence, only as showing the entire transaction recorded in the minutes of the corporation.

Mr. UELAND.—But whether counsel is willing to have these admitted at this time without further proof, of course, will be for him to say.

Mr. McCOURT.—I would not feel justified in admitting them at his time. They purport to be made the same date as the deed which we question bears, at the same time and under similar circumstances.

Mr. UELAND.—Well, we will wait.

Mr. LIND.—It is understood that the evidence just offered and received is equally applicable in either suit.

COURT.—It might be well that counsel should enter into a general stipulation that all the evidence applicable might be transferred.

Mr. GEARIN.—It is understood that anything that is applicable may be used in either suit, No. 3319 or No. 3320. **[998—697]**

Defendant's Exhibit "I."

(Defts. Exhibit "B.")

WHEREAS, C. A. Smith is under liability on the promissory notes described in schedule A and C. J. Johnson on the promissory notes described in schedule B below, to the Swedish American National

Bank of Minneapolis (the last four notes on each schedule being identical):

SCHEDULE A.

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
May 5, '06.	C. A. Smith		Demand	$ 7100.00
Dec. 31, '06.	C. A. Smith		"	11440.00
Apr. 25, '08.	E. D. A. Whitney Eliza B. Whitney	Frank N. Barons C. A. Smith	Oct. 26, '08.	18700.45
Aug. 3, '08.	Mereen Johnson Mch. Co. by Edgar Dalzell	C. A. Smith	Nov. 2, '08.	2000.00
Aug. 24, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Dec. 24, '08.	5000.00
Sep. 2, '08.	Mereen John Mch. Co. by Edgar Dalzell	C. A. Smith	Mch. 2, '09.	4000.00
Sep. 4, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Jan. 4, '09.	5000.00
Sep. 28, '08.	C. A. Smith Lumber & Mfg. Co. by Chas. L. Trabert, Sec.	C. A. Smith	Oct. 28, '08.	10000.00
Sep. 21, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Jan. 21. '09.	5000.00
Oct. 3, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Feb. 3, '09.	5000.00
Oct. 12, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Feb. 12, '09.	3000.00
Jul. 6, '08.	C. A. Smith Timber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 6, '08.	25000.00
Jul. 10, '08.	C. A. Smith Timber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 10, '08.	10000.00
Aug. 12, '08.	C. A. Smith Timber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 12, '08.	40000.00
Sep. 8, '08.	C. A. Smith Timber Co. by C. A. Smith, Pt.	C. A. Smith	Feb. 8, '09.	10000.00
[999]				
Jul. 10, '08.	C. A. Smith Lumber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 10, '08.	$10000.00
Aug. 27, '08.	C. A. Smith Lumber Co. by C. A. Smith, Pt.	C. A. Smith	Dec. 28, '08.	30000.00
Jul. 30, '08.	C. A. Smith Lumber Co. by C. A. Smith, Pt.	C. A. Smith	Nov. 30, '08.	35000.00
Jul. 16, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. A. Smith W. E. Maunsel	Nov. 16, '08.	3500.00
Oct. 5, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. A. Smith W. E. Maunsel	Jan. 4, '09.	10000.00
Oct. 7, '08.	N. W. Compo-Board Co. by C. J. Johnson, V. Pt.	C. A. Smith C. J. Johnson Wm. H. Springer	Nov. 6, '08.	25000.00

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
Aug. 31, '08.	S. E. Oscarson Co. by S. E. Oscarson, Sec.	S. E. Oscarson C. A. Smith C. J. Johnson	Oct. 30, '08.	1000.00
Oct. 24, '08.	S. E. Oscarson Co. by S. E. Oscarson, Sec.	S. E. Oscarson C. A. Smith C. J. Johnson	Nov. 23, '08.	8000.00
Sep. 28, '08.	Johnson & Co. by J. T. Hovren, Sec.	C. A. Smith J. T. Hovren C. J. Johnson	Nov. 2, '08.	1000.00
Sep. 2, '08.	Johnson & Co. by J. T. Hovren, Sec.	C. A. Smith J. T. Hovren C. J. Johnson	Dec. 15, '08.	2500.00

SCHEDULE B.

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
Jul. 13, '08.	C. J. Johnson		Jan. 13, '09.	$25000.00
Jul. 15, '08.	C. J. Johnson		Jan. 15, '09.	2500.00
Sep. 18, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. J. Johnson W. E. Maunsel	Nov. 17, '08.	5000.00
Sep. 14, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. J. Johnson W. E. Maunsel	Dec. 14, '08.	4000.00
Sep. 14, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. J. Johnson W. E. Maunsel	Dec. 14, '08.	2500.00
Sep. 23, '08.	Lauritzen Malt Co. by W. E. Maunsell, Sec.	C. M. Amsden W. E. Maunsel C. J. Johnson	Jan. 23, '09.	3950.00
[1000] Oct. 3, '08.	N. W. Luth. Bd. of Education, by E. O. Stone, Pt., Axel Anderson, Sec.	Axel Anderson E. O. Stone E. G. Dahl C. J. Johnson	Jan. 4, '09.	$1000.00
Aug. 31, '08.	S. E. Oscarson Co. by S. E. Oscarson, Sec.	C. A. Smith S. E. Oscarson C. J. Johnson	Oct. 30, '08.	1000.00
Oct. 24, '08.	S. E. Oscarson Co. by S. E. Oscarson, Sec.	C. A. Smith S. E. Oscarson C. J. Johnson	Nov. 23, '08.	8000.00
Sep. 28, '08.	Johnson & Co. by J. T. Hovren, Sec.	C. A. Smith J. T. Hovren C. J. Johnson	Nov. 2, '08.	1000.00
Sep. 2, '08.	Johnson & Co. by J. T. Hovren, Sec.	C. A. Smith J. T. Hovren C. J. Johnson	Dec. 15, '08.	2500.00

WHEREAS the Bank holds bonds of C. A. Smith Timber Company of Marshfield, Oregon, to the amount of $400,000 face value, and 300 shares of the stock of the Linn and Lane Timber Company (said shares being evidenced by certificate No. 5) as security for the notes described in schedule A, and C. A. Smith desires to have these bonds released;

WHEREAS it has been agreed between C. A. Smith and C. J. Johnson on the one hand, and the Bank on the other hand, that the Bank will release these bonds in consideration of 210 shares of C. A. Smith, in addition to the 300 shares above mentioned, and 15 shares of C. J. Johnson in said Timber Company being pledged for the payment of the notes described in schedules A and B;

WHEREAS C. A. Smith has accordingly transferred 208 such additional shares to said Bank as pledgee, and one share to B. F. Nelson, Trustee, and one share to C. C. Wyman, Trustee, the 208 shares being evidenced by certificate No. 13, the other 2 shares by certificates numbered respectively 9 and 10, and C. J. Johnson has also accordingly transferred his said 15 shares to the Bank as pledgee, the same being evidenced by certificate No. 12; **[1001]**

WHEREAS it is intended that the 525 shares thus pledged to the Bank, the same constituting more than a majority of the stock of said Timber Company, shall give the pledgee such control that no indebtedness or liability on the part of the Timber Company should be contracted without the consent of the pledgee, until the indebtedness to the pledgee is fully paid.

NOW, THEREFORE, in consideration of the release of said bonds and the extension of payment hereinafter mentioned, and the transfer of said 225 additional shares of said Timber Company, IT IS HEREBY MUTUALLY AGREED between C. A. Smith and C. J. Johnson, hereinafter designated as pledgors, and The Swedish American National Bank, hereinafter designated as pledgee, as follows:

1. The 525 shares of stock in the Linn and Lane Timber Company transferred by the pledgors to the pledgee, the same including the 2 shares transferred to B. F. Nelson and C. C. Wyman, herein designated as trustees, shall be held by the pledgee and trustees respectively as security for the payment of the notes described in schedules A and B, and for the payment of any renewal note or notes which may hereafter be taken for the same.

2. The 523 shares which have been transferred to the pledgee the secretary of the Linn and Lane Timber Company is hereby authorized and directed, whenever requested by the pledgee, to transfer on the books of the Company to the trustees, or either of them, to the end that the right of the trustees, or either of them, to vote these shares at all meetings of the corporation may not be questioned.

3. The pledgors hereby constitute and appoint each of the trustees their true and lawful attorney and proxy, irrevocable as long as the aforesaid shares remain pledged, to vote said shares or any of them, at any and all meetings of the corporation, in any and all matters pertaining to the business of the corporation, **[1002]** including the selling of its property, and the election of directors and

officers, and as long as said shares, or any of them, remain pledged, the pledgors will not question the right of either of said trustees to hold and exercise the offices of director, president, secretary or treasurer of said corporation.

4. Except as to $50,000 which C. A. Smith has paid on the indebtedness for which the bonds were pledged (the notes described in schedule A representing his obligations after such payment) and except as to $100,000 additional which he will pay, if possible, within 60 days, he shall be entitled to an extension until one year from the date hereof, for the payment of the notes described in schedule A.

5. The pledgors hereby waive demand, protest and notice of dishonor as to the notes described in schedules A and B, and as to any renewal note or notes for the same, and consent hereby to the extension or renewal of any of said notes, and of any such renewal note or notes, and hereby agree that no omission or latches on the part of the pledgee, or its assigns, in fixing or enforcing the liability of any person or party other than the pledgors, upon any of said notes, or renewal note or notes, shall release or discharge the pledgors from liability on such notes or renewal note or notes.

6. In case of default in the payment of the notes, or any renewal note or notes, for which said 525 shares are pledged, the pledgee or trustees, or either of them, may sell a sufficient number of said shares to pay what may then be past due and payable on such notes, together with the expenses of the sale, and if such sale is made at any broker's board, or at public sale, the pledgee and trustees, may be-

come purchasers, but no such sale shall be made on less than 30 days' notice to the pledgors.

7. If either of the trustees shall at any time be unable or unwilling to act as contemplated by this agreement, the pledgee **[1003]** may appoint another person in his place, and the person so appointed shall have all the rights, powers and privileges of his predecessor.

8. In case of sale by the pledgee or trustees of any of said shares, the 510 shares pledged by C. A. Smith shall first be sold to pay the notes described in schedule A and the 15 shares pledged by Johnson shall first be sold to pay the notes described in schedule B, except that as to the notes which are included in both said schedules, the pledgee or trustees may elect which of said shares to sell first.

9. When the notes described in schedules A and B and the renewal note or notes which may be taken for the same are paid, the pledgee and trustees respectively shall transfer back to C. A. Smith the shares pledged by him then remaining unsold, and to C. J. Johnson the shares pledged by him and then unsold, and shall account to each for any surplus remaining of the proceeds after applying such proceeds upon the indebtedness for which said stock is pledged.

10. This agreement shall be binding on the heirs, executors and administrators of the pledgors and on the successors and assigns of the pledgee, and on the successors in trust of each of the trustees.

Signed in triplicate at Minneapolis, October 31, 1908.

C. A. SMITH.
C. J. JOHNSON.
THE SWEDISH-AMERICAN NATIONAL BANK OF MINNEAPOLIS.
[Seal] By N. O. WERNER, President.
E. L. MATTSON, Cashier.

We hereby accept the trust declared in the foregoing agreement.

B. F. NELSON.
C. C. WYMAN.

Filed May 10, 1910. G. H. Marsh, Clerk.

[1004]

Defendant's Exhibit "J."

(Defts. Exhibit "C.")

WHEREAS, By a contract in writing made in triplicate at Minneapolis, Minnesota, and dated October 31st, 1908, by and between C. A. Smith, C. J. Johnson and the Swedish-American National Bank of Minneapolis, one of said triplicate contracts being hereto attached, made a part hereof and marked Exhibit "A," the said C. A. Smith and C. J. Johnson assigned and transferred to said Swedish-American National Bank five hundred and twenty-three (523) shares, and to C. C. Wyman and B. F. Nelson, as Trustees for said Swedish-American National Bank, one (1) share each, of the capital stock of Linn & Lane Timber Company, a corporation of the State of Minnesota, as collateral security for the payment of certain promissory notes or other obligations owned by said Swedish-American National Bank, and upon which said Smith and

Johnson, or one of them, were liable as makers, endorsers, guarantors or in some other capacity, schedules of which said notes, marked Schedule "A" and Schedule "B," were included in and formed a part of said agreement; and

WHEREAS, Said B. F. Nelson and said C. C. Wyman accepted the trust in said agreement specified and received each one share of said capital stock, and the said five hundred and twenty-three (523) shares of said capital stock were issued to and received by said Swedish-American National Bank, a part of which agreement was that said B. F. Nelson and C. C. Wyman should become directors and officers of said Linn & Lane Timber Company, and that all of said stock so transferred to them and to said Swedish-American National Bank should be voted by said Trustees at all meetings of the stockholders of said Company so long as said agreement remained in force, and at the request of said bank said stock should all be **[1005]** issued to said Trustees so as to secure their right to vote the same at any meeting of the stockholders of said Company, and that said Trustees should also, upon request of said Bank, act as executive officers of said Company, all of which stipulations and agreements were authorized, ratified and approved by all of the stockholders of said Linn & Lane Timber Company at a meeting thereof duly held on the 31st day of October, 1908; and

WHEREAS, Since the making of said agreement and the transfer of said stock as security for said indebtedness, said indebtedness mentioned in said Schedules "A" and "B" has been sold, assigned and

transferred to the Northwestern National Bank of Minneapolis, Minnesota, and the said stock in said Linn & Lane Timber Company, so pledged as security for the payment of said indebtedness, has also been assigned and transferred for the same purpose to said Northwestern National Bank, which said last named Bank has assumed and does hereby assume the obligations of said Swedish-American National Bank in said agreement specified, relating to the extension and carrying of the notes and indebtedness in said Schedules "A" and "B" mentioned:

NOW THEREFORE, In consideration of the premises, and of the sum of one dollar each to the other in hand paid, the receipt whereof is hereby acknowledged, it is mutually covenanted and agreed by and between C. A. Smith, C. J. Johnson, the Northwestern National Bank of Minneapolis, and B. F. Nelson and C. C. Wyman, as Trustees, that the said five hundred and twenty-five (525) shares of the capital stock of said Linn & Lane Timber Company are held and shall be held by said Northwestern National Bank and by said Trustees as security to said Northwestern National Bank, its successors and assigns, for the payment of the notes and indebtedness mentioned in said Schedules "A" and "B," and for any renewals thereof, or any new notes already given or hereafter to be given in place of any **[1006]** of the indebtedness mentioned in said Schedules "A" a*b*d "B" or either of them, and as security for the payment of all notes now held by said Northwestern National Bank upon which said C. A. Smith and C. J. Johnson, or either of them, are in any way responsible or liable either

as makers, endorsers, guarantors or otherwise, and for the payment of any note or notes hereafter given to said Northwestern National Bank, its successors or assigns, in renewal or in place of any of said notes, schedules of which said notes so held by said Northwestern National Bank, marked, respectively, Schedule "A–2" and Schedule "B–2," are hereto attached and made a part hereof.

And it is hereby agreed that the said B. F. Nelson and C. C. Wyman, Trustees, shall continue to act as Trustees for said Northwestern National Bank, and agree to so act by their consent thereto endorsed hereon and signed by each of them.

And it is agreed that all the rights, interest and security held by said Swedish-American National Bank under said agreement and in and to said stock has been transferred to and is now held, owned and possessed by said Northwestern National Bank, its successors and assigns, with the same force and effect in all respects, for the purpose of securing payment of the notes in said Schedules "A" and "B," and Schedules "A–2" and "B–2" and any renewals thereof, and any new notes given in place of any thereof, as the same was held, owned and possessed under said contract by said Swedish-American National Bank; and that the Northwestern National Bank has the same rights in said stock as security, and the same right to enforce and foreclose the same, as was held or possessed by said Swedish-American National Bank before the sale by it to said Northwestern National Bank of the obligations secured thereby, and the transfer by it to said Northwestern National Bank of such security.

IN WITNESS WHEREOF, This agreement has been executed **[1007]** in triplicate this 12th day of December, A. D. 1908.

C. A. SMITH.
C. J. JOHNSON.
THE NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS,
By E. M. DECKER,
Vice-president.
J. E. HOLTON, [Seal]
Cashier.

We consent to the above.

B. F. NELSON.
C. C. WYMAN. **[1008]**

"SCHEDULE A-2."

Promissory Notes on Which C. A. Smith is Liable.

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
Nov. 28, '08.	C. A. Smith		Demand	$19493.77
Nov. 4, '08.	C. A. Smith		Demand	19721.18
Sept. 8, '08.	C. A. Smith Timber Co. by C. A. Smith, Pres.	C. A. Smith	Feb. 8, '09.	10000.00 Pd
Nov. 12, '08.	C. A. Smith Timber Co. by C. J. Johnson, V. Pres.	C. A. Smith	Feb. 13, '09.	40000.00 Pd
Nov. 6, '08.	C. A. Smith Timber Co. by C. J. Johnson, V. Pres.	C. A. Smith	Mch. 6, '09.	25000.00 Pd
Nov. 10, '08.	C. A. Smith Timber Co. by C. J. Johnson, V. Pres.	C. A. Smith	Mch. 10, '09.	10000.00 Pd
Aug. 27, '08.	C. A. Smith Lbr. Co. by C. A. Smith, Pres.	C. A. Smith	Dec. 28, '08.	30000.00
Nov. 10, '08.	C. A. Smith Lbr. Co. by C. J. Johnson, V. Pres.	C. A. Smith	Mch. 10, '09.	10000.00 Pd
Nov. 30, '08.	C. A. Smith Lbr. Co. by C. A. Smith, Pres.	C. A. Smith	Mch. 30, '09.	35000.00 Pd 20
Nov. 2, '08.	Mereen Johnson Mch. Co. by Robt. A. Johnson, Secy.	Robt. A. Johnson C. A. Smith	Feb. 2, '09.	2000.00 Pd
Sept. 2, '08.	Mereen Johnson Mch. Co. by Edgar Dalzell	C. A. Smith	Mch. 2, '09.	4000.00 Pd
Oct. 28, '08.	C. A. Smith Lbr. & Mfg. Co. by C. A. Smith, Pres.	C. A. Smith	Mch. 1, '09.	10000.00 Pd
Nov. 6, '08.	N. W. Compo-Board Co. by C. J. Johnson, V. Pres.	C. A. Smith	Mch. 6, '09.	25000.00

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
Aug. 24, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Dec. 24, '08.	5000.00
Sept. 4, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Jan. 4, '09.	5000.00
Sept. 21, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Jan. 21, '09.	5000.00
Oct. 3, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Feb. 3, '09.	5000.00 Pd
Oct. 12, '08.	John E. Holmberg Minnie Holmberg	C. A. Smith	Feb. 12, '09.	3000.00
Sept. 2, '08.	Johnson & Co. by J. T. Hovren, Secy.	C. A. Smith J. T. Hovren C. J. Johnson	Dec. 15, '08.	2500.00
Nov. 23, '08.	S. E. Oscarson Co. by S. E. Oscarson, Secy.	C. A. Smith S. E. Oscarson C. J. Johnson	Dec. 23, '08.	8000.00
Oct. 5, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsel C. A. Smith	Jan. 4, '09.	10000.00
Nov. 16, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsel C. A. Smith	Meh. 16, '09.	3500.00
[1009]				276,214.95

"SCHEDULE B-2."

Promissory Notes on Which C. J. Johnson is Liable.

Date.	Maker.	Endorser, or Surety.	Maturity.	Amount.
July 13, '08.	C. J. Johnson		Jan. 13, '09.	25000.00
July 15, '08.	C. J. Johnson		Jan. 15, '09.	2500.00
Sept. 14, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsel C. J. Johnson	Dec. 14, '08.	2500.00
Sept. 14, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsel C. J. Johnson	Dec. 14, '08.	4000.00
Sept. 23, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsel C. J. Johnson C. M. Amsden	Jan. 23, '09.	3950.00
Nov. 17, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsel C. J. Johnson	Feb. 15, 09.	5000.00
Nov. 9, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsel C. J. Johnson	Feb. 8, '09.	5500.00
Nov. 2, '08.	Lauritzen Malt Co. by W. E. Maunsell, Secy.	W. E. Maunsel C. J. Johnson	Feb. 1, '09.	1000.00
Nov. 13, 08.	N. W. Lutheran Board of Education, by E. O. Stone Pt. Axel Anderson, Secy.	Axel Anderson E. O. Stone E. G. Dahl C. J. Johnson	Feb. 11, '09.	1500.00
Sept. 2, '08.	Johnson & Co. by J. T. Hovren, Secy.	J. T. Hovren C. A. Smith C. J. Johnson	Dec. 15, '08.	2500.00

Date.	Maker.	Endorser or Surety.	Maturity.	Amount.
Nov. 23, '08.	S. E. Oscarson & Co. by S. E. Oscarson, Secy.	S. E. Oscarson C. A. Smith	Dec. 23, '08.	$8000.00
Oct. 3, '08.	N. W. Lutheran Board of Education, by E. O. Stone, Pt., Axel Anderson, Secy.	C. J. Johnson Axel Anderson C. J. Johnson E. O. Stone E. G. Dahl	Jan. 4, '09.	1000.00

Filed May 10, 1910. G. H. Marsh, Clerk. **[1010]**

[Testimony of Peter Buffington, for Defendants.]

PETER BUFFINGTON, a witness called on behalf of the defense, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. LIND.)

What is your name? A. Peter Buffington.

Q. Where do you live?

A. Well, I am living here at present.

Q. You are one of the men who made Timber and Stone entries in 1900—you entered one of the tracts involved in this suit, did you not?

A. Yes, sir.

Q. Where were you living at that time?

A. At Albany.

Q. Do you know Mrs. Beeman who appeared as a witness in this case? A. Yes, sir.

Q. Did you have any conversation with her relative to a timber and stone entry?

A. Yes, sir.

Q. You may state how you came to have one.

A. Well, she sent word to me by my brother-in-law, who was a bridge carpenter at that time on the same road where her husband worked, and I went over to her house in the evening after supper and

(Testimony of Peter Buffington.)

had a conversation with her.

Q. After that conversation, did you see anybody else with reference to taking a claim?

A. I saw her husband afterwards—not that evening, but the next day.

Q. Did you see Mr. McKinley?

A. Yes, sir.

Q. Did you conclude to take a claim? **[1011—618]**

A. Yes, sir.

Q. Did you go up to the place where that claim —where the claim was located, and examine it?

A. Yes, sir, I did.

Q. On the occasion of that trip, did you go alone, or were there others with you?

A. There was a crowd.

Q. You may name some of them in the party.

A. Well, there was myself, Tarpley was in the crowd, Mrs. Beeman and McKinley, and others that I didn't know.

Q. Where did you go?

A. We went up to Mealey's and stayed all night and then went up on the claim.

Q. Was Mrs. Beeman along? A. Yes, sir.

Q. How did she go? Did she start out from Mealey's the next morning towards the timber and into the timber?

A. Yes, sir, she went up to the timber.

Q. How did she go? A. Horseback.

Q. How did you go? A. Afoot.

Q. Do you remember whether she rode a side saddle or astride? A. She rode astride.

(Testimony of Peter Buffington.)

Q. You don't remember whether she wore trousers for the time being or not, do you?

A. No, I do not.

Q. You may state how you proceeded from the time that you left the Mealey house to go to look at these claims—the different members of the party?

A. Well, I only remember myself, Mrs. Beeman, McKinley and Tarpley. There were others in the bunch, but I don't remember them. I went down across the creek up the side of a mountain, the trail that was made up into the—finally up on the top of the mountain we come to a prairie and I went **[1012—619]** off to the left down to where my claim was and looked at the corners, and come back up to the prairie—McKinley and I. As I came back up to the prairie, why, I notice the horse and the lady in the prairie, and after that I came on back to the cabin—to the bunch.

Q. Who did you make the arrangements with with regard to being located on this claim and entering it?

A. Who did I make the arrangements with?

Q. Yes.

A. Why, with her—that is, Mr. McKinley was to locate me.

Q. When did you make that arrangement with reference to the time that you saw Mrs. Beeman?

A. I think it was the next day, if I am not mistaken.

Q. What was the arrangement that you made with Mr. McKinley?

A. That I would go up there and take a timber

(Testimony of Peter Buffington.)

claim and that the—that I was to give him a mortgage on the timber claim for $600. If I sold the claim, why, I was to give him back his money and he was to pay all the expenses.

Q. Was there anything said about your having—that you would get some cash?

A. Yes, sir, he was to give me $100. I think it was $100—or something over, if I remember right. It was something over $100, if I remember right.

Cross-examination.

(Questions by Mr. McCOURT.)

Who paid your expenses up to see the land?

A. McKinley.

Q. Where were you living at that time?

A. Albany.

Q. How long after you went to see the land before you went **[1013—620]** to file on it?

A. Well, I can't remember just exactly how long it was.

Q. Didn't you go and file on it first? Didn't you go down to Roseburg before you went to see the land?

A. Yes, I filed on the land before I went to see it, yes, sir.

Q. Who paid your expenses on that trip?

A. McKinley paid them.

Q. You lived at Albany then? How many of them was there went to Roseburg that same occasion? A. I don't remember the number.

Q. What?

A. I don't remember the number.

Q. Four or five of you? A. Yes.

(Testimony of Peter Buffington.)

Q. Six or seven?

A. Maybe more, I don't know.

Q. And where did you stop when you got to Roseburg?

A. If I ain't mistaken, I stayed at the Roseburg House.

Q. How many more stayed there?

A. I don't know.

Q. Who paid your hotel bill?

A. I don't remember whether McKinley paid that or whether I paid it myself.

Q. It was his business to pay it, anyway, in the transaction, wasn't it?

A. He was supposed to pay the bills, yes, sir.

Q. Now, after you had filed, how long was it before you went to see the land?

A. Oh, I don't remember just how long; some thirty days—something like that.

Q. It was just before you went to prove up, wasn't it, that you went to look at the land—a few days before—a week or so? **[1014—621]**

A. Well, I can't say whether it was or not. I don't remember the time—how long it was.

Q. Then you went back to Roseburg and made proof? The same party was there again? The same number of persons? A. Yes, sir.

Q. Now, how long was it after you made proof that you got your $100, or whatever it was?

A. Why, the same day, I think it was.

Q. Where was it paid to you?

A. I have forgotten now, just where it was paid to me. It was there in town somewhere, but I have

(Testimony of Peter Buffington.)

forgotten where.

Q. Did you sign a deed and mortgage right there and then? A. Yes, sir.

Q. Who did you mortgage the land to?

A. I have forgotten now.

Q. Who did you deed it to?

A. I don't remember that.

Q. Who paid you the money?

A. McKinley.

Q. You weren't married then? A. No, sir.

Q. Who were you working for?

A. I wasn't working for anybody at that time.

Q. What was your business?

A. I wasn't doing anything at that time. I was just crippled—after being crippled for a couple of years.

Q. Had been crippled? A. Yes, sir.

Q. How did you get crippled?

A. A horse fell on me.

Q. You had been laid up for a couple of years?

A. Something like that—almost that time.

Q. How long was it after that before you got able to work? A. Oh, not but a little while.

Q. You say Mrs. Beeman first spoke to you about the claim? **[1015—622]** A. Yes, sir.

Q. When did you next hear of the claim after you made a deed to it?

A. I don't remember now.

Q. Did you ever do anything more about it at all?

A. I had nothing more to do with it, no.

Q. Do you remember McKinley asking about it

(Testimony of Peter Buffington.)

later and wanting you to make an affidavit?

A. No, sir, I don't remember.

Q. Do you remember going into the Revere House up there and making an affidavit or some sort of an instrument in regard to it?

A. At Albany?

Q. Yes. A. Don't remember it, no, sir.

Q. Before a Special Agent of the government?

A. I don't remember about it, no.

Q. I will ask you if that is your signature there attached to affidavit of claimant in "U. S. Exhibit 15"? A. It looks very much like it.

Q. That is your writing, is it?

A. I couldn't say that. It looks like it.

Q. Don't you never remember of signing any instrument after you had deeded it, at all, or ever having anything more to do with it?

A. I don't remember signing any affidavit at all.

Q. Don't you remember a year or so afterward McKinley came around and told you a Special Agent of the Government wanted to take your affidavit about that claim and you rushed off and asked Mrs. Beeman what you should do about it?

A. I don't remember anything about it, no, sir.

Q. Have no recollection of it at all? **[1016—623]**

Q. How far is it from the Mealeys' place out to where that land is, that you went to look at?

A. Oh, it is not so very far. I couldn't tell you the exact distance. It has been a long time, and I could not remember.

Q. Was Mrs. Moulten on the trip?

(Testimony of Peter Buffington.)

A. I don't remember of seeing Mrs. Moulten.

Q. Don't remember her at all? Are you sure Mrs. Beeman was there?

A. I remember it distinctly.

Q. What? A. Yes, sir.

Q. Where did Mrs. Beeman join your party?

A. Well, I don't remember that. I don't think she was in the same rig where I was in.

Q. Where do you first remember seeing her on the trip? A. At the Mealey house.

Q. What time of day?

A. Oh, it was after we got there in the evening, if I remember right.

Q. And she went with the same party out to the timber that you were in?

A. I wasn't with her, no. She went out the same day.

Q. You had been acquainted with her? You knew her? A. Yes, sir.

Q. Were you ever up there at any other time than this one time? A. No.

Q. Is that the only time you were ever out to this timber, or in that locality, in your life? **[1017—624]**

A. Yes, sir.

Q. And Mrs. Beeman was there upon that occasion? A. Yes, sir.

Q. What sort of a horse did she ride?

A. She rode a bay mare.

Q. Whose horse was it?

A. It belonged to the Mealey boys. At least, I suppose it did.

(Testimony of Peter Buffington.)

Q. And were you riding, too? A. No, sir.

Q. Was she the only person that rode, in the party?

A. As near as I can remember, she was.

Q. Was she the only lady in the party?

A. She is the only one that I remember.

Q. All the rest were men?

A. If I remember, yes.

Witness excused.

Mr. LIND.—That is all, your Honor.

Whereupon proceedings herein were adjourned.

[1018—625]

Portland, Oregon, Thursday, May 5, 1910.

Mr. LIND.—We will call the defendant Kribs, and by arrangement with counsel, I will conduct the examination. He is called on his own behalf.

[Testimony of Frederick A. Kribs, One of the Defendants, on His Own Behalf.]

FREDERICK A. KRIBS, one of the defendants in this case, being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. LIND.)

Mr. Kribs, where do you reside?

A. Portland.

Q. How old are you? A. 50.

Q. How long have you lived here?

A. Since February, 1902.

Q. Where did you reside before you took up your residence in Portland?

A. Well, principally through the years 1900

(Testimony of Frederick A. Kribs.)

and 1901, I was traveling on the coast—traveling most of the time for two years, but prior to that I lived in Minneapolis, Minnesota.

Q. When did you first come out to the coast, to what point and under what circumstances?

A. I came out—I started some time in January or the first days of February, 1900. I reached San Francisco, California. I came out to look over the country in a general way as to timber resources.

Q. Had you been here on the coast previous to that time? A. My first trip.

Q. Where did you first land at that time?

A. San Francisco.

Q. How long did you remain in and about San Francisco? **[1019—852]**

A. Until about the latter part of March, 1900, I was in and out different places.

Q. What were you engaged in doing during the latter part of February and early part of March, in California?

A. I was looking at different tracts of lands as they were submitted to me—different locations—getting knowledge of the country.

Q. At that time or subsequently during the year 1900 did you have any business arrangement with the defendant C. A. Smith?

A. Only in a general—very general way. I wanted to go to the coast; he wanted information here; told me to—when I come out here to look around and keep him posted; if I should see anything that might suit him or be of interest to him, let him

(Testimony of Frederick A. Kribs.)

know about it.

Q. Was there anything said about your purchasing property for him, and if so, state just what the arrangement was.

A. I was to come out in a general way, submit any opportunities, and if I thought the properties was something that he would want, why, he would consider the same; and when I first came out, the first two or three months, there was nothing about compensation nor anything, but after I had been out here two or three months I met him here and spoke to him and told him if there was anything that I picked out for him, why, I should charge him so much per acre—some kind of commission—suggested an acreage price for anything I might do for him, but there was no—said we would take that up later on in case he went into any general deals, and adjudicate that at some future time.

Q. Did you during the year 1900, negotiate and buy properties for him under that arrangement?

A. I did. **[1020—853]**

Q. And when did you have a definite settlement in regard to the amount per acre which you were to have?

A. It was the latter part of that year; sometime in December, 1900. We had talked over business that I had done for him at quite length and settled upon the compensation.

Q. Well, you entered into a written agreement with him, did you?

A. I think the written agreement was about a

(Testimony of Frederick A. Kribs.)

year after that, and then there—

Q. Was that the first agreement in writing that you had with him?

A. I think so, yes; in fact I am sure it is.

Q. Do you know how—

A. We made one contract, I think it was in 1901, and then there was a clause added to it changing the compensation. That was some time in 1902. That was the only contract—written contract.

Q. Now, during the year 1900 and under this arrangement, did you buy timber land for others?

A. I did.

Q. For whom?

A. I bought some for the Pillsburys; some for Mr. Shook; some for Snyder and Gale—different people. I was dealing—

Q. Did you buy any for Wisconsin people at that time?

A. Without I could look up, I don't know.

Q. Well, I just want to get a general idea of the character of your business.

A. I had correspondence with a great many people and tried to open up a general timber business wherever I could.

Q. Did you buy any in your own behalf?

A. I did.

Q. Extensively? A. Yes. **[1021—854]**

Q. Took the conveyances in your own name?

A. I did.

Q. With your own means? A. I did.

Q. Now, when did you first meet or hear of the

(Testimony of Frederick A. Kribs.)

witness S. A. D. Puter?

A. Somewhere about the 18th or 20th of February, 1900. I cannot state the exact date.

Q. How—what were the circumstances?

A. He hunted me up in San Francisco; had a letter of introduction from Mr. Smith, and submitted 60 or 64 quarter sections all scattered school lands in Coos and Douglas Counties, Oregon.

Q. What did he suggest in connection with that list of school lands that he submitted?

A. He made representations concerning these lands as to the timber, quantity and quality, location, and had made, as I understood, a deal, subject to my approval, with Mr. Smith, to take these lands. I found his arrangements—very heavy storms—also that payments had to be made a few days thereafter and I had no chance to go and see the lands and I turned it down.

Q. Well, then, what did you do as you remember?

A. I was off making some investigations, as I recollect, in Amador and Calaveras Counties.

Q. In the State of California? A. Yes.

Q. Was that the first time that you ever met S. A. D. Puter? A. Yes, sir.

Q. Had you ever heard of him before?

A. No.

Q. At that meeting and in the conversation that you had relative to these school lands, was there any suggestion **[1022—855]** made by him in regard to fir lands or fir timber in Linn County, Oregon?

A. Nothing was said at that time. He says, "If

(Testimony of Frederick A. Kribs.)

you will not take these lands, I am going to see Mr. Peyton, a Duluth banker, and am going to move as fast as I can, as I have only a few days to get several thousand dollars to Salem, Oregon, as the certificates will all be cancelled." He went away, as I understood, either to Los Angeles or Santa Barbara, and met Mr. Peyton there.

Q. You don't know that of your own knowledge?

A. Yes, Mr. Peyton came along a few days later and said he had made a contract with Puter for those scattered school sections, and paid him some money for those scattered school sections in the State of Oregon.

Q. You knew Mr. Peyton, did you, personally?

A. I had met him east and got pretty well acquainted with him. We stayed at the same hotel.

Q. When did you next see Mr. Puter?

A. As I recollect, it must have been perhaps two weeks, or such a matter as that, after the first meeting.

Q. Well, state the circumstances.

A. He came to me at that time and stated that he had made this deal; talked it over.

Q. What deal?

A. The school land deals, and also had a lot of abstracts and plats on a large tract of Humboldt County redwood. He said a very great bargain. As I recollect, that is the first time he spoke of these claims in Linn County.

Q. He mentioned those claims at that time?

(Testimony of Frederick A. Kribs.)

A. I think that was the time he spoke about it, yes.

Q. About what date was that, according to your best recollection? **[1023—856]**

A. I should think it would be ten or twelve days thereafter; might be the first days of March; I cannot say. I made no notation of it.

Q. Well, could it possibly have been earlier than the first of March?

A. It might have been, because I was talking with him somewhere from the 18th to the 20th and that would give him eight or nine days after he got back; if he got back the last days of February.

Q. Did he state anything with reference to the title of these Linn County lands?

A. What he said to me that he had located 57 pieces of land; that he had agreed to furnish these people money—they in turn were to give him $200. his location fee and expenses that he was to; that he had agreed to furnish this money. It was getting pretty close to the time they should prove up and he thought he would have considerable trouble if he didn't raise the money.

Q. Was—did he say anything about a mortgage or anything of that kind?

A. Yes, they was to give a mortgage on the land as security to him, if he raised the money.

Q. Did you hear anything from Smith or do you recall when or under what circumstances he first had any connection with this matter?

A. As I remember that, Mr. Puter talked with

(Testimony of Frederick A. Kribs.)

me two or three times or several times about these lands; and my recollection is somewhere during the middle of March—I can't give the date exactly—Mr. Smith came out to San Francisco, and all three of us had a meeting. The first tract under consideration was this redwood tract in Humboldt County. Next **[1024—857]** he spoke of these claims again; gave a description of the lands, quality, quantity, and said that they were taken by a lot of poor fellows and that after they would have title a man would not have much trouble to make a bargain for them; that he wanted anyway to get enough for the first payment and enough to get his fee out of it and take a short time mortgage. He was sure that he could buy the lands afterwards—something like that.

Q. Well, what further—what transpired after that? What did Smith say, if anything, at that time?

A. That if I was up in the vicinity of these lands and went to Oregon along about that time, I might make an examination. Nothing was said very definite, as I had agreed, at Mr. Smith's request, to examine into the plant of the Sierra Lumber Company at Chico and Red Bluff. Shortly after that I made this examination.

Q. What examination?

A. The California properties.

Q. How did you come to go—you did actually go to Linn County later?

A. I left California and I reached Albany, Oregon, Sunday, April 1, 1900.

(Testimony of Frederick A. Kribs.)

Q. Then who did you meet?

A. Mr. McKinley.

Q. Did you have any talk with him?

A. He was there to meet me. At first I was going through to Portland. I received a telegram on the train to stop off at Albany in case I was going to Portland; I would only be delayed three or four hours. I rustled around, got my baggage off and stopped off at Albany on Sunday instead of going through.

Q. Who did that telegram come from? **[1025—858]**

A. Mr. Puter.

Q. Do you remember where he wired from?

A. I am not sure. I didn't know that he knew where I was, but I asked him—I think it must have been in California—but I got the impression that he wanted to get in touch with me, and he sent word to the Occidental Hotel and they told him I had my mail forwarded to Red Bluff, and he took a chance and caught me at Red Bluff before I started. He wanted to know when I was going to Oregon. I told him about the first of April—something like that.

Q. Had you ever been in the State of Oregon prior to that date? A. That was my first trip.

Q. Well, when you met McKinley and Puter at Albany on April 1st, what transpired, if anything?

A. I met McKinley. He said he was there to go out and show me those lands. Mr. Puter was not there. He came next day. I only saw him a few moments and told him McKinley and I were going

(Testimony of Frederick A. Kribs.)

to start up, I think that afternoon for the lands—to examine the lands.

Q. Did you go up there? A. Yes.

Q. Pass through what purported to be those lands?

A. Yes, sir, McKinley and I went over the lands and other parties were along with us.

Q. How much time did you spend there?

A. I think we ran, in a general way, a day and a half. I think it was the second day—the evening of the second day we came back to Mr. Mealey's, and started for the railroad.

Q. How did the timber impress you?

A. As being very fine timber—large, smooth, very nice. **[1026—859]**

Q. After you had seen the timber did you deem it advisable to advance the $600 required on each transaction?

Mr. McCOURT.—I object to that as leading and suggestive.

Mr. LIND.—The rules in regard to matters of that kind are so different in different jurisdictions. In our State it has been permissible for generations to ask the party in regard to his belief, and I confess my lack of knowledge as to the rule in this State or court.

COURT.—You may proceed on that theory. The rule in an equity case is not as strict as in law.

Q. (Read.) A. Yes.

Q. Well, what—who else—did you have any talk with McKinley about this matter at that time?

A. I talked with him considerably going and com-

(Testimony of Frederick A. Kribs.)

ing from the lands, at the time we were driving.

Q. Well, in what respect? What did you inquire about?

A. I asked him about the lands, about the location, and who the people were. I got all the information that I could from him. Asked him about it going up.

Q. Did you meet any of the entrymen?

A. I saw two or three, I think, at Mr. Mealey's. I think two went over into the mountains with us.

Q. Who were they, if you recall?

A. I think Mr. Wagner, Mr. Tarpley, and then there was some man who had a claim, from Albany, but I can't tell his name.

Q. Now, in the course of conversation with these parties, did they speak about their claims or mention the fact that they had claims—show them up to you or anything of that kind?

A. No, they did not. We left early in the morning, horseback. We traveled up over the trail, traveled through **[1027—860]** the timber and worked hard—were busy all the time we were there. And I don't know, I might have made a remark—asked them where their claim was, or if they had a claim, or something like that; but I didn't pay much attention to these people.

Q. When did you leave Albany after you returned to the railroad?

A. I think that I went to Roseburg very shortly thereafter—a day or so.

Q. At the time of that visit, did you know when the final proofs were to be made on those claims?

(Testimony of Frederick A. Kribs.)

A. I was told when they were to prove up.

Q. By whom, if you recall?

A. I think Mr. McKinley told me that; they had given me the dates.

Q. When did you indicate—did you see Puter again?

A. I don't recollect of seeing him until about the time the people were all in Roseburg and ready to prove up.

Q. That is the first batch who proved up in April?

A. Yes, sir.

Q. When did you indicate to McKinley or Puter that you would advance the money to make final proof?

A. Shortly after I had seen the timber. That is, after I come back from the road and thought it all over and made up my mind that I would make short time mortgages anyway.

Q. Was there anything said about buying the land, and if so, state what.

A. There was nothing said at that time about purchasing the land at all.

Q. What amount did you agree to advance?

A. $600.

Q. On each claim? A. Yes. **[1028—861]**

Q. Rate of interest mentioned?

A. I think it was eight per cent. I don't remember now.

Q. Was there anything said about the time of the loan?

A. It was a—I think three or six months—something like that.

(Testimony of Frederick A. Kribs.)

Q. When, if ever, was anything said about buying the claims, the first talk about buying the claims?

A. I think it was the evening after the first 18 proofs were put in at Roseburg, possibly. I think that was the time.

Q. It was—was it at Roseburg?

A. I think so.

Q. What was said and between whom?

A. I talked with Mr. Puter about it and he said that he thought he could handle all these people. They didn't have much of any money. They should have $6.00 or $6.50 an acre—something like that. And I suggested probably $5.00 an acre would be enough for that kind of location. Anyway, he compromised at, I think it was, $5.25, or something like that.

Q. Well, did you tell him that you would buy the lands, take the lands at $5.25 or any other sum?

A. That as soon as any of them had the receipts and were ready to sell, I would buy the lands.

Q. At that price? A. Yes.

Q. Did you—what did you hear about this Northern Pacific contest that has been referred to?

A. I looked into it and figured that it was nothing but a scare to drive off the people who had filed on the lands.

Q. How did you look into it? Did you inquire of anybody you knew?

A. I asked McKinley. I think we talked with Puter and I [1029—862] talked with Mr. Sanders, a representative of the Northern Pacific Road. I had some inquiry with him. He said a railroad com-

(Testimony of Frederick A. Kribs.)

pany had a right to run a bluff once in a while the same as anybody else.

Q. Where did Mr. Sanders make that statement to you? A. Roseburg.

Q. Was that at the time—were you there at the time of the hearing—at the time of final proof?

A. I was there during final proof. I do not recollect of any hearings going on, but heard afterwards that they actually did have one or two hearsings in the Land Office; but I didn't know it at the time.

Q. Now, who took the—who looked after the taking of the mortgages or the conveyances, as the case might be, for you?

A. The work, as I recollect, was done principally by Mr. John H. Shupe, an attorney.

Q. Is he living?

A. He died, I think, about six—five or six years ago.

Q. Did you employ him to look after the matter of taking the mortgages for you? A. Yes, sir.

Q. And pay him for those services?

A. Yes, sir.

Q. Was he a practicing attorney?

A. Yes, sir, he had an office right across the hall from the Land Office.

Q. Had you met him prior to that time?

A. I met him just about the time those proofs were being made. I consulted with him and talked with him about those lands. My understanding that when this railroad trouble came up, I was told Mr. Shupe and Crawford was [1030—863] employed

(Testimony of Frederick A. Kribs.)

to fight the railroad company. Mr. Crawford has his office across the street. I didn't know much about him. Mr. Shupe's office was right in the Land Office building and he was the man with whom I talked principally about this matter.

Q. Had Shupe previously been connected with the Land Office?

A. I believe years ago he was one of the officials in the Land Office. That is a good many years ago.

Q. Was he recommended to you as a competent, capable attorney, or otherwise?

A. He was recommended as a good, honest man, and a good, competent man.

Q. Did you ask him with regard to these entries and the titles?

A. I talked—I remember talking with him about this alleged contest by the railroad company. He said it didn't amount to anything and I asked him if it would be all right to advance the money for these people and take mortgages on the lands. He said yes.

Q. Did you believe that? A. Yes, sir.

Q. At that time did Crawford act for you?

A. I think he was in consultation with Mr. Shupe and—but I never had very much talk with Mr. Crawford. The only thing that freshens my mind that perhaps he might have taken care of a part, is I found where I made a check out to him or something like that, as payments for some of these lands, but I had figured all the time that Mr. Shupe had practically done everything.

Q. Except to pay the Land Office—

(Testimony of Frederick A. Kribs.)

A. Entrance fees.

Q. —fees. A. Yes, sir. **[1031—864]**

Q. Is Mr. Crawford the present State attorney—Attorney General of this State? A. Yes.

Q. Is that the man? Now, at the time that you instructed Mr. Shupe to look after these lands, look after this business for you, had you had any experience in business in the State of Oregon?

A. That was my first business here. I was familiar in a way with the Timber and Stone law before I came here. I didn't need a great deal of advice as to what would be legal in the matters, yet at the same time I got all the information that I could from him—got his version of the case; he said that the people were all right; the railroad company had no right to contest them. I told him I was figuring on loaning the money; he said it would be all right and I made arrangements with him to attend to it.

Q. Now, at that time had you heard or had it been suggested to you from any source that those entries were fraudulent?

A. Never heard anything of the kind. At the time of the contest I talked with five or six people around there, and the information they gave me was entirely to the contrary.

Q. What did they state to you in regard to the character of the entries?

A. That they located these lands in a rush to head off the railroad company, and thought it was funny that a big corporation like a railroad company would try and beat them out. I said, "Was you hired to

(Testimony of Frederick A. Kribs.)

go on there?" They says, "We was not." Had no bargain; took the lands for themselves.

Q. Did they say anything to you about who located them?

A. I don't know as I asked them about that, as I knew Mr. McKinley had located about everybody.

[1032—865]

Q. Now, was it customary at that time when public lands came into the market, for locators—did men make it their business to act as locators to locate settlers on public lands?

A. Yes, I should think there was probably about fifty with headquarters at Roseburg, during the year of 1900 and part of 1901. Probably 500 in the State of Oregon making that specialty.

Q. There was nothing unusual in that—in the matter of McKinley or Puter locating these men on these claims, was there? A. Not at all.

Q. Was it or was it not the customary way of transacting that business? A. I think it was.

Q. Now, at that time, when you were there making loans or taking deeds, conveyances of these lands, were you acting in good faith? A. I was.

Q. Did you have any suspicion of anything wrong or any violation of law or defrauding the Government or anything of that kind in connection with your business? A. I did not.

Q. Now, how did the deeds come to be taken in the name of John A. Willd?

A. That would be at the request of Mr. Smith. It is done pretty nearly every day in every country in order to conceal the true buyer.

(Testimony of Frederick A. Kribs.)

Q. Well, what is the object of that?

A. Well, it jumps up prices if they find that some rich man is in buying up timber, and that is done right along **[1033—866]** all the time to keep everybody in the dark as much as possible.

Q. Now, did you instruct Mr. Shupe to look after the money part of it, the taking of securities and the taking of the deeds? A. I did.

Q. And he did that for you? A. He did.

Q. When did you first—at the time that you instructed Mr. Shupe to take these—make this loan or take the conveyances for you, as the case might be, did you actually believe that these entrymen might rightfully and lawfully mortgage or sell, as the case might be? A. I did.

Q. When did you first learn that the good faith of these entries was questioned?

A. Shortly after Mr. Smith and Mr. Puter had a big row over a redwood contract in California.

Q. Yes?

A. He said there was money coming to him, or he couldn't get a settlement; that he wanted it.

Q. Who said so?

A. Puter. If he didn't get it he would make trouble about the claims. I said, "What you going to do?" He said, "I will go to Washington and tell them this is a whole framed up deal." I said, "You have never talked that way before." He said, "The Secretary of the Interior don't know anything about it."

Q. When did you report—by the way, who advanced the money for the making of these loans?

(Testimony of Frederick A. Kribs.)

A. I gave a check on the First National Bank at Roseburg to these attorneys and they paid it into the Land Office. [1034—867]

Q. Whose money was that? A. Smith's.

Q. How had you—what were your arrangements with Smith with reference to drawing money—obtaining money? How was it actually done?

A. Well, I would probably—whatever I submitted to him and it was suitable to him and I needed some money, I would wire to him I would like to make a draft or something like that; then make a draft on him and deposit the draft in the bank.

Q. These funds were obtained from C. A. Smith in that manner, were they? A. Yes.

Q. When did you turn over to him the deeds taken to John A. Willd for the lands in this suit?

A. It must have been some months afterwards. I cannot give the dates. You mean, when were the lands deeded to Smith?

Q. No, when you turned over the Willd deeds—when you sent them in to Minneapolis, if you remember?

A. I don't know when the deeds of Willd were sent to Minneapolis.

Q. Yes, when the purchase was reported to Minneapolis?

A. Oh, that must have been a very few days after the proof.

Q. Did you do anything about procuring abstracts for these entries?

A. I think later on abstracts were ordered.

Q. Do you happen to know when the deeds were

(Testimony of Frederick A. Kribs.)

sent, actually sent to Minneapolis?

A. I do not. I cannot remember.

Q. Were they placed for record by you or did Mr. Shupe attend to that? **[1035—868]**

A. I think I sent them up for record.

Q. And reported the transaction to Mr. Smith?

A. Yes.

Q. There has been some evidence in this suit that Mr. McKinley was placed under arrest at the instance of the Northern Pacific people at or about the time that you first visited Oregon?

A. Yes.

Q. What did you learn or hear about that?

A. That they had a hearing at Albany and he was discharged. There was nothing to it.

Q. Had that hearing been had before you went to the land, or was it held afterwards?

A. I think it was about—I don't know whether it was before or after. I know there was a hearing; I never paid much attention to it.

Q. You ascertained that he was discharged?

A. He was discharged, yes, sir.

Q. When did you first learn about the relations between Puter and McKinley and their plans with reference to the making of these entries?

A. At the time I went upon the land, Mr. McKinley told me that he had located these several people on the land, and had located them to make a location fee out of it; and after the lands were proved up if they could handle them and make any additional money, they would do so if they could.

Q. Did he state to you why they wanted a $600 loan?

(Testimony of Frederick A. Kribs.)

A. Enough to pay for the land and enough money included for their locating fees and the expenses they had been to.

Q. Did you say that he also said that later he expected **[1036—869]** to have the handling and make some more?

A. If he—after they are proved up, if he could handle the lands he thought he would get a preference right to do the same.

Q. Well, the question I asked you a moment ago was, when you first heard about this alleged corrupt agreement between McKinley and Puter and these entrymen, if there was such an agreement?

A. The only—as I answered once before—the only insinuations I heard against the entry that were not right came from Mr. Puter himself at the time he had the trouble with Mr. Smith, whenever that was.

Q. Later on, before patent issued, there was an investigation by the Interior Deparment—

A. Yes.

Q. —of these lands. When was that commenced, if you remember? That is, when did you first learn about it?

A. I think it was late in the fall or winter of 1900, and the examination was made in the early part of 1901, as I remember it.

Q. How did you hear about that?

A. Well, I think first my attention was called to it by Mr. Puter that they were going to take affidavits from these different people.

(Testimony of Frederick A. Kribs.)

Q. Were you looking after the titles in a general way to these lands that you had bought for Smith?

A. Well, yes; I was in a general way and as he had gotten the lands, naturally enough I would take interest enough to look after them.

Q. Do you remember the terms of your written agreement on that point? That it should be your business to look after the perfection of titles? **[1037—870]**

A. Yes, there was—as I remember, there was a certain sum of money held back until certain titles, not only to these lands, but other lands in a general way, were perfected.

Q. Between you and Smith? A. Yes.

Q. That is, in the written agreement, but was that the understanding prior to the written agreement?

A. Well, naturally enough it would be that I would try to protect for him anything that I had recommended him to take.

Q. Now, when did you first learn about this man Stratford whose name has appeared in testimony in this case?

A. I don't know who first gave me his name, but I inquired as to who was to take those affidavits, and they told me a Mr. Stratford.

Q. When did you first meet him, if you recall?

A. I think it was late in the fall or winter of 1900, as I remember now.

Q. State to the Court fully and frankly, what relations, if any, you had with him. And what conversations and what relations existed between you with

(Testimony of Frederick A. Kribs.)
reference to taking any affidavits concerning these or any other claims that he was investigating.

A. He called me up one time and said that he *and* orders to take affidavits on these claims and wanted to know where the different people were; and was going to do it late in the fall. And I went away to Coos County, and I didn't come back for some time after and he was gone. In the spring of 1901—that is the way I remember it now—not a great while prior to the time that the affidavits were actually taken—he asked me where these different people were—if I could find them—that the Department had called for the affidavits. I told him that I would assist him in **[1038—871]** getting them together, and would get affidavits from as many of the people as we could find.

Q. Well, did you assist him? A. I did.

Q. In finding these people and their addresses?

A. Yes, I spoke to Mr. McKinley about it. I think Mr. Puter saw some of the people, too, but I think in picking up the most of them, I think Mr. McKinley and Mr. Puter and Mr. Tarpley told me where they were—got them together.

Q. Now, did you meet Stratford often during the course of that—he was the Field Agent in this district? A. Yes, sir.

Q. Did you meet him often in the course of this investigation of these and other entries?

A. No, not very often, because he was looking into this late in the fall of 1900, and through the spring of 1901, and most of the fall of 1900, I wasn't in this

(Testimony of Frederick A. Kribs.)

country at all.

Q. It appears in evidence that you gave him certain moneys. I wish you would state frankly to the Court just what you did, how it came up, and what the facts are in that regard.

A. He asked me on two or three occasions for a loan. He wanted money for certain purposes, and I gave it to him. I purchased also from him 40 acres of land; and I cannot remember the number of times that he asked me for money. I think it was two or three times, and the land transaction was the only business I ever had with him.

Q. Well, now, how large a tract was that you purchased? A. 40 acres.

Q. What did you pay him? A. $400.

Q. Did he ask you $400? A. Yes.

Q. Was it land in the vicinity where you were acquiring lands? **[1039—872]** A. Yes.

Q. Well, what did you do when he proposed to sell it to you?

A. Well, I had a man by the name of McGiven go out and examine the land, and shortly after that I told him to put his deed in the bank, as I remember, and I purchased it from him.

Q. Now, why did you buy that land?

A. Well, he wanted to sell it, and the fact of the case it didn't represent very much, and I figured, to be candid about it, that if I bought it from him or any little favors, why, I might not lose anything by it. That is about the way I felt about it, and I might turn him down and might get a whole lot of trouble

(Testimony of Frederick A. Kribs.)

out of it. I didn't know. I took the lands, anyway; while it was a higher price than other lands that we were entering at that time, for the reason that most of the lands we were entering we were using forest reserve scrip—vacant public lands. Wasn't buying very much deeded land through that part of the country. I figured, after an examination, the land was worth what I gave for it, though lands were selling really cheaper.

Q. Well, frankly, you bought it, because he offered it to you and you wanted his good will rather than his ill-will. Is that it?

A. That is about the size of it.

Q. Now, in regard to these loans.

A. He asked me for some sums. I know in one instance he wanted it for, he said to go up higher in one of his fraternal orders or something like that, and I gave it to him.

Q. Did he ask for it as a loan? Did you give it to him as a loan, or was anything said about what it was for?

A. He asked me for it. He said he wanted to go up higher [1040—873] in one of his fraternal orders, and I gave it to him. In fact, he asked it as a loan.

Q. What about the other occasion?

A. I don't know what he said he wanted it for, but he said he wanted a loan for a few days. Said he wanted to use a little money—something like that. I gave it to him.

Q. Now, in making the purchase of that land, and

(Testimony of Frederick A. Kribs.)

in making him these loans, what was your motive, if any? Did you intend to influence his conduct as an officer?

A. No, I don't think he was a man that you would have to go out and try to influence him.

Q. What do you mean by that?

A. I think he was a pretty decent, clean sort of a fellow.

Q. Well, did you—did you act differently in making these loans to him than you would with any other man that you had come in contact with as much as him, and were acquainted with?

A. No, just the same.

Q. You used "scrip" a moment ago. What do you mean by scrip in this connection?

A. I was operating in Coos, Douglas and Curry Counties as to lands there that were usually heavily timbered lands, that is, in the mountains and vacant Government lands, and I bought from the railroad company principally lands which we term scrip, but which is really lands which were in a forest reserve, deeded back to the Government, and I could make an exchange and take these other lands that I wanted.

Q. Lieu land scrip, was it not? **[1041—874]**

A. Yes, sir.

Q. How much did that cost you? I am speaking now of the fall of 1900.

A. From—in the year of 1900, from $3.75 up to about $4.25—$4.15. Around about $4.00 an acre. **[1042—875]**

(Testimony of Frederick A. Kribs.)

Q. At the time that these entries were made in April and May, 1900, did you have such scrip at that time available for the entry of public lands?

A. I bought some about that time, yes. $3.75, I think it was, per acre.

Q. What relation was there between the price of scrip and land values generally?

A. Well, of course, the scrip would be a good deal cheaper. Scrip would run from $3.75 to $4.00, and probably lands from five to eight and nine dollars per acre.

Q. Well, was the price of deeded lands limited in any measure, or did it follow in a degree, the price of scrip?

A. Well, I don't know as I would say that. Ten year ago in the mountainous country, there was not really any value to speak of; that is, in timbered lands anywhere in Oregon excepting, perhaps, up and down the Columbia River here, or there might be east of the mountains some little tract of timber very handy to a railroad, immediately available. But what we would term speculative or remote timber, it had no value. You would make your own price.

Q. Well, now, the lands in controversy in this suit, were they regarded as of the available class, or speculative at that time?

A. Speculative. Speculative then and speculative now.

Q. Do you know the witness Saltmarsh who appeared and testified in this case?

A. I remember his name, but don't think that I

(Testimony of Frederick A. Kribs.)

would know him as I was not in here at the time he testified.

Q. Do you recollect the occasion when he gave his affidavit to Stratford in this city in connection with his entry? **[1043—876]** A. I do not.

Q. He testified here in substance that he gave an affidavit, which was introduced in evidence, before Stratford, and that on that occasion you were present, seated opposite him, and when questions were asked him, you nodded to indicate the answer that he should give, or words to that effect. Now, did anything of that kind ever occur?

Mr. McCOURT.—Just a moment now. No, that is all right. Go on.

A. I am quite sure nothing like that ever occurred.

Q. Do you recollect that you were present at the taking of any of those affidavits?

Mr. McCOURT.—That was at Albany, Mr. Lind—at the Revere House, as I recall it—that Saltmarsh affidavit was taken.

A. I do not remember of being in the room or assisting in taking affidavits from anyone.

Q. Well, did you ever nod or indicate in any manner the character of an answer that should be given?

A. No.

Mr. LIND.—Well, perhaps it was at Albany. Now, what is your pleasure, Mr. McCourt to now proceed and inquire in regard to the other case?

Mr. McCOURT.—I would just as soon.

Mr LIND.—Or did you prefer to cross-examine now?

(Testimony of Frederick A. Kribs.)

Mr. McCOURT.—No, I would just as soon go right on now.

Q. By the way, I omitted to ask you, Mr. Kribs, whom did you pay for the lands involved in this suit?

A. Mr. Puter. **[1044—877]**

Q. When did you have the settlement with him for these lands—actually pay the money?

A. I could briefly give this whole transaction in just about half a minute, if you want it.

Mr. LIND.—Well, is there any objection— it is a memorandum—is there any objection to our referring to that?

Mr. McCOURT.—When did you make that?

A. I made it before I gave up my checks.

Mr. McCOURT.—It is merely a memorandum of what the checks show?

Mr. LIND.—Yes.

A. Yes, what I have given you.

Mr. McCOURT.—All right.

Mr. LIND.—And to aid us. It is not evidence in itself.

Mr. McCOURT.—No, I understand; but I just wanted to know where he got it.

Mr. LIND.—Yes.

A. April, 1900, I gave a check for $7,200, which went into the Land Office. April 20th, for one entry, $410.75.

Mr. McCOURT.—That was paid Mr. Crawford, or given to Mr. Crawford?

A. I think so. April 25th, the first money that I ever gave Mr. Puter was on April 25th. I gave him

(Testimony of Frederick A. Kribs.)

a check for $7,349.25; May 16th—

Mr. LIND.—What was that check for?

A. That was, he had brought in practically and delivered all of the deeds and came in for settlement at the time he delivered the deeds. I gave him $7,349.25.

COURT.—What date was that? **[1045—878]**

A. April 25th. Now, on this account May 16th, I gave him a check for $1,000. It amounted to $15,960. There was nineteen claims of 160 acres each, 3040 acres at $5.25 which makes the *$15,96*.

Mr. McCOURT.—Nineteen claims, how many acres?

A. Nineteen claims, 3040 acres, the way I have it here at $5.25 per acre. Now, I want to explain when I gave him that check of $7,349.25, I figured out the acreage at $5.50, and, which is customary in buying lands where title is not fully perfected, a thousand dollars was supposed to be kept out until patents issued. Well now, May 16th he stated he wanted some money, and he said he would like to have the thousand dollars that was coming to him; that he could use it; and that he would do anything that he could as to these titles if any demand was made on him; that he was short of money; and I gave it to him, and that balances that. Now, do you want a statement about the other claims there?

Mr. LIND.—Yes. **[1046—879]**

A. There were 14 claims, each of which averaged about 171 acres, making a total of 1525.44 acres at $5.25 is $12,208.56.

(Testimony of Frederick A. Kribs.)

Mr. McCOURT.—How many dollars?

A. $12,208.56. Now, I gave him May 8th a check of $3500, practically on account. I know there was some money coming on some of these claims, but there were either some school sections in that same vicinity that were fully closed for, or there were certificates out. At any rate, I gave him $3,500 on account. May 16th I gave him $5,962.60, which represented the land office fee in the proofs of May 16th. May 22, 1900, he came to me in Roseburg, and stated he was on his way to California, that he had some options on redwood, that for me to give him all the money that I could spare on this transaction, as he was going to prove up a large tract of land, and it would take money to do it. I wrote him a check for $9,000. The money, the consideration, the way I figured it out of the lands, of the 1525 acres at $5.50 an acre, was $12,208.56. On the school lands, $6,400, making $18,608.56, of the checks that I gave him, amounting to $18,462.60. Well, I have no records or anything that I can go to to verify and find out about all of these things, and I notice there is about $140 difference in the account, which probably might have been adjudicated or adjusted in some other way, or there might have been some cash or something paid into the Land Office. I don't know. That is all I can say.

Q. Now, as a matter of fact those lands were all paid for by you in full, during the months of April and May, 1900? **[1047—880]**

A. Yes, sir. Practically speaking, all of the people that took these lands, with the exception of

(Testimony of Frederick A. Kribs.)

two or three, were strangers. They all scattered out. I didn't see so very much of Mr. Puter after that, from that day to this day. We took a trip into California, all of us, for a few weeks in the redwoods. Then after that trip, from that time to this, I have only occasionally seen him, and have had but a very little or any business dealings with him. The principal deal was our 11–7 business, that we tried out here a few weeks ago.

Mr. UELAND.—I think we have to just take the testimony right along, because otherwise we would have to cover the relation between the witness and Mr. Smith. I think we will have to take it right along, and then separate it by Mr. Smith.

COURT.—Very well. That will be satisfactory. Mr. Kribs' entire testimony can go into each branch of it.

Mr. UELAND.—Yes.

Q. Mr. Kribs, I now desire to inquire of you in regard to the lands involved in the other suit. I think, in conversation with you heretofore I have referred to those lands as the Mealey claims. A. Yes.

Q. When did you first learn about those claims?

A. Some time prior, a short time prior to the proof of O. J. Mealey, William R. Mealey, John A. Thompson, and another name—I have looked up—a man named Steingrandt. Shortly before they proved up, Mr. O. J. Mealey met me and stated that they were going to prove up, and would like to borrow money to make their final proofs, [1048—881] and stated they had some money, but they could use that

(Testimony of Frederick A. Kribs.)
in case they concluded not to sell at once. I told him that I would loan him the money. And I told him beside that that "when you make your proof, instead of making a loan, I would a great deal rather buy your land than have a mortgage proposition."

Q. Well, what was done subsequently?

A. Well, I have some abstracts here, partially from the records in the Land Office, which would state.

Q. By the way, before I forget it. I want to ask you a question in the other case before I overlook it. Recurring to the other case, which you have just testified in regard to, were you present at the Land Office when the second lot of proofs were taken in May, 1900, May 16, 1900?

A. I am not sure whether I was in Roseburg or not. I have no way of swearing to that positively. Now, I might have been there, because on that date there was a thaousand dollars check, I believe, given to Mr. Puter, and that I don't know—you have the checks—so I don't know whether it was paid there or in Portland. If it was paid right there in Roseburg and deposited.

Q. Whether you were there or not, who attended to your interest on that occasion?

A. I think it was Mr. Shupe.

Q. He had full charge of the matter of making the loans and taking the conveyances, did he?

A. I instructed him to do that. Now, whether he took them all or not, I cannot tell without looking up.

Q. Did you take any? A. No.

(Testimony of Frederick A. Kribs.)

Q. Well, now, we will recur to the matter in evidence. After this transaction with Mealey, O. J. Mealey, with **[1049—882]** reference to furnishing money for proving up on those claims, that you named, the two Mealeys and Thompson and Steingrandt, what was done? A. After the proof?

Q. No, after this conversation with O. J. Mealey.

Mr. McCOURT.—Just a moment. What are you looking at?

A. Come on. Look it over before I go to talking. You have got the stuff that I expected to have and refer to, and I have given it to you, so I have made a memorandum for myself.

Mr. McCOURT.—Well, this is the amounts of the checks.

A. And I have my data and dates, and some abstracts that I have.

Q. As long as it is a list of checks. You have some other memorandum there. I want to know where you got it before you testify about it.

Mr. McCOURT.—That is just a list of checks. I don't have any objection to that. We have the list of checks. I was going to put them in evidence.

A. I gave you the checks when I made these memorandums.

Mr. UELAND.—He is not testifying from the memorandum now, anyway.

Mr. McCOURT.—He was looking at it.

Mr. LIND.—It is simply to guide him as to the dates of the instrument.

Mr. McCOURT.—Well, if he has any use for these.

(Testimony of Frederick A. Kribs.)

Mr. LIND.—No, I don't think so.

(Question read.)

Q. After that, what occurred, what did you do?

A. Well, from my memorandum, August 16, 190*0*, they made **[1050—883]** their proof at the Land Office, and the check for $1642.04 was paid into the Land Office as their Land Office fees.

Q. Yes. Did you buy their claims from them at that time or subsequently?

A. I practically purchased the claims from them at that time, though I know that August 16th, I paid W. R. Mealey a balance on his claim by check $429.52. The same date there was a check for Steingrandt, which must have paid for his. Now, on the same dates were two checks of $100 each which I gave Thompson and O. J. Mealey. The only way that I can explain that is this: As I remember, they gave me some notes—they gave me some notes. Now, they have to go home and have their wives sign those deeds, and when those deeds came back again, August 27th, I gave them checks of $329.51, $329.49, and that transaction was closed.

Q. That together with the $100 made their equity? A. Yes, sir.

Q. What did you pay for those four claims?

A. I think it was about $5.00 an acre. No, I think it was $5.25—$5.50 an acre.

COURT.—Whom were the checks made payable to, Mr. Kribs?

A. One check is W. R. Mealey, and on the Steingrandt, I think that was made to O. J. Mealey,

(Testimony of Frederick A. Kribs.)

and the other checks to O. J. Mealey and J. A. Thompson.

Q. Now, tell us all about that bargain and the transaction.

A. Well, about all there was to it they had filed on these lands, and shortly before proof, they came down to see me, and I said that I would furnish the money and just whenever their proofs were completed, they had the privilege **[1051—884]** of giving a mortgage or they could sell out if they wanted to. And I made a bargain and gave them $5.25 for their lands, and got the title as soon as I could.

Q. Had you ever had any conversation with them or any of them in regard to these entries prior to that time?

A. No. Till a short time before proof was made I have no recollection of knowing that they had filed on any pieces of lands.

Q. You had met them before?

A. I met them by staying all night at their house when we went into the mountains going and coming.

Q. That was about the 20th of May?

A. The first trip.

Q. I mean the first of April.

A. The first of April, and then I was there again, I think it was for one night or possibly two in May, 1900, and then I was not up there again for about eight years.

Q. Prior to the purchase of these lands, had you ever talked with them about making entries?

(Testimony of Frederick A. Kribs.)

A. No.

Q. Had they ever told you that they had or intended to take timber claims?

A. They never said anything about timber claims at all.

Q. Prior to the conversation you refer to?

A. Prior to the time that I saw them there in Roseburg, whenever that was.

Q. Now, when you met them in Roseburg and bought these claims, did you buy them in good faith?

A. I did.

Q. Believing that they had full right and could lawfully sell them to you? **[1052—885]**

A. Yes.

Q. Had you any suspicion of any wrong being intended on the Government, or anybody else?

A. No.

Q. You later bought and took, I think, took mortgages in some instances, of some of the remaining of the claims involved in that suit. Now proceed and tell us.

A. About the time that this proof was made of these four pieces that we just mentioned—two Mealeys, Thompson, Steingrandt—I had a talk with O. J. Mealey, possibly William R. Mealey was there—I am not so sure—that they were going in there and going to locate a lot of their friends in the Sweet Home country on lands. They thought that they could get money at either Brownsville or Albany; in case that they wanted to get money, would I advance it. I told them if these people took good lands that were not burned, good virgin timber,

(Testimony of Frederick A. Kribs.)

that I would advance money; that I would take a mortgage on the land; whenever they had anything for sale, if it was good stuff, I would be very glad to buy it, and made it good and plain.

Q. When was that conversation?

A. That was not a great while, as I recollect, after this first transaction. I think it was about that time.

Q. Well, what occurred later?

A. Well, there were nine people, I find from the abstracts and the Land Office book by the name of Billings, S. Pickens, Andrew Wiley, Ericksen, Joe Steingrandt, Joseph Michalson, John T. Barker, Charles Wiley, George Pickens. There was about 1440 acres of land. They proved up August 27th, and there was a check paid **[1053—886]** into the Land Office for the nine claims, amounting to $3,696.46.

Q. What other conversation did you have with reference to these claims, and with whom, and what was done?

A. Well, on this list of claims of 1440 acres, I talked with them about this land after their proofs were made, or about that time—1440 acres—said it was not as good lands as the other, and I told them that I would give them $4.75 an acre for that.

Q. Well, then what?

A. Well, about the time of proof, or shortly thereafter, at the time they proved up, I always took a note or mortgage or both, as my own protection, and I know the lands. Shortly after that, they all deeded their lands. That is, I have some

(Testimony of Frederick A. Kribs.)

abstracts here. Here is the receipt of August 27th.

Mr. McCOURT.—Now, what is that you are referring to—that memorandum you made?

A. This is from the County Recorder of Albany and of an abstract of each piece. The abstract of the record, and also some data as to when they proved up.

Mr. McCOURT.—When was that made?

A. In the last few days—last few weeks.

Mr. McCOURT.—This abstract was?

A. Yes. Part of it is from Land Office records, and part from Albany.

Mr. McCOURT.—I would like to have the witness testify from his recollection.

COURT.—I suppose that is an abstract of what is already in evidence?

Mr. McCOURT.—Yes. **[1054—887]**

COURT.—Well, if he makes mistakes in dates it can be corrected by the record.

Mr. McCOURT.—I understand. But I want to see whether his recollection is good.

A. I was told I could use this, or I would try to charge my memory. And that is why I have not done it.

Mr. McCOURT.—I want to see how far his memory is charged with these past transactions, rather than from the record aiding his memory to the record.

COURT.—Let him state what he remembers about it.

A. I think some of them sold the same day, and some very shortly thereafter—sold the lands.

(Testimony of Frederick A. Kribs.)

Q. Now, you said a moment ago you took a mortgage for your own protection. What did you mean by that?

A. In case they would go home and wanted to change their mind and didn't want to sell, and didn't sell, I would have something to show for the money that I had advanced.

Q. To the Land Office? A. Yes, sir.

Q. Well, how many claims did you buy in the aggregate through the Mealeys?

A. Well, in this transaction there is, four and nine is thirteen—I think it is 24 claims involved, 24 claims in the proofs of August 16th, August 27th I think there were eleven, and October, making 24 claims in those three lots.

Q. Were you present at the Land Office when the proofs were made in these cases?

A. I think that I was present in August.

Q. Were you present at the subsequent times?

A. I was not present in October.

Q. Had you anything to do with the proofs?

A. No. **[1055—888]**

Q. When did you pay for these claims—to whom and how? Who brought you the deeds?

A. The deeds were either brought to me or sent to me, either by O. J. Mealey, W. R. Mealey, or possibly Thompson. That I cannot tell. It is one or the other of them. The three of them were working and locating, and such a price as I made, whenever these lands were ready for sale, I says, "I will pay so much for them" whenever the deeds were presented.

(Testimony of Frederick A. Kribs.)

Q. And you paid for them. State how you paid for those 24 claims that you refer to.

A. On the first nine claims, August 27th, I paid $1,000 to Mealey brothers and Thompson, in three checks $333⅓, one check $333.34, the other two $333.33, making one thousand dollars. On September 16th I gave Thompson a check for $542.33, W. R. Mealey, $542.53, O. J. Mealey, $542.53 and that left a balance on these lands of $516.15 of that payment paid to date. Now, the third claims, there was a check to the Land Office of $4155.68. That must have been looked after possibly by Mr. Shupe. I was not here at that time. October 17th there was a check of $410.61 which was for the Watkins claim. November 1st, I paid O. J. Mealey $300. December 13th, I gave him $638.32; December 13th J. A. Thompson $940.82; December 13th, W. R. Mealey, $940.82. Now, that left a balance on these claims of a little over $1500. There was a little over $500 on the lot of nine claims, on October 17, 1902. The only way I can get at it was from some check stubs which stated—stubs of the checks I gave Mr. McCourt when patents were issued on Rock Creek lands. I gave **[1056—889]** them one check of $772.04, $632.54, $632.54, making a total of $2037.12. For that account there is about a difference of $6.00 somewhere, which I cannot account for. Now, in one of these lists of lands, there was a piece of land taken by a man named Fred Wodtli. I found the stub of that check, dated December 13, 1900, for $850 for the Wodtli claim. Yet in looking up my abstract, I find that Watkins October made a deed,

(Testimony of Frederick A. Kribs.)

I think, to one of the Mealeys and the Mealey deeded it to me.

Q. Did you know anything about these entries or the entrymen?

A. The entrymen, as I recollect—

Q. —except the Mealeys and Mr. Thompson—

A. They were all strangers to me.

Q. Did you have any conversation with them at all or dealings with them? A. I did not.

Q. Did you have any conversation with Wodtli?

A. No, I did not.

Q. You made a check to him direct, did you?

A. No, I think it went to one of the Mealey boys or Thompson. I am not sure. I think they got it. I made some inquiries—I gave $850 for the land, and my recollection is Wodtli received $750 or something like that. It might have been $800. I know I gave $850 for it.

Q. At the time you bought these claims, did you pay the current market price? A. I did.

Q. Or higher?

A. I paid the market price right through that lands were selling for in that vicinity. **[1057—890]**

Q. Did you buy them in good faith?

A. I did.

Q. Did you believe that these parties who sold to you—Thompson and the Mealeys you bought from—some of the claims were bought from the Thompsons and the Mealeys, were they?

A. Practically the deeds and the transactions with these people were with the Mealeys. I was not up in that country, and did not know these people,

(Testimony of Frederick A. Kribs.)

and I looked to Mealeys and Thompson—they were given a good reputation. I stated I would pay so much per acre, and my impression from them was this, that they were going practically themselves for a locating fee, or make a commission or something out of it—make what they had a mind to.

Q. Now, in buying those claims and taking those conveyances did you believe that the parties who made the sales and made the conveyances had the right to do so lawfully and rightfully?

A. Yes.

Q. Was there any doubt in your mind on that question?

A. I asked two, all three of them one time, I says: "How are you locating these people, and who are they?" "They are our neighbors; they have lived here for years; some of them born and raised in these mountains. We are locating them." I says: "Are you hiring them to go on there, anything of that kind"? They says, "Nothing of that kind." They says they can go on there, and after they get their land, they can do with it just as they please. They put it up to me as a straight, legitimate proposition.

Q. Well, did you have any reason to doubt their statement?

A. I did not. There was no holler through the country **[1058—891]** about land frauds or mix-ups or anything of the kind. I was up there in April, or May. At that time I did not even talk to them about any of these lands or anybody else. And I never went up there again for about eight

(Testimony of Frederick A. Kribs.)

years and a half after. I was very busy off in Coos and Douglas and California, sometimes in Idaho. And I took their word for what they said.

Q. How did you come to take these conveyances to yourself in this instance. They eventually became the property of C. A. Smith, did they not?

A. Yes.

Q. And Swanson?

A. I didn't think anything particular about that, because either they might have been deeded to Willd or any other name he suggested, or to myself, and at the same time, I know I had one idea of buying up quite a bit. I was a stranger here. They would find I was practically located and staying here, and it was my name, they would hunt me up, perhaps there might be propositions presented all over the country or territories, and the people would come right directly to me. I would cut out just as many third and fourth men as possible.

Q. Intermediaries? A. Yes.

Q. The money used for paying for these conveyances, was that your own or was it Smith's?

A. That was practically all Smith's land—Smith's money.

Q. In regard to these lands, had you submitted these purchases to Smith before they were made, or did you not submit them until after they were made?

A. I practically told him about them after they were made, as I recollect. But I had talked about that country, certain streams in that country, and the slopeage of **[1059—892]** that country would be a good territory to group up a tract of land with-

(Testimony of Frederick A. Kribs.)

out presenting any particular quarter sections of land.

Q. What were you paid for purchasing these lands for Mr. C. A. Smith?

A. Well, we had quite a argument in settling, about compensation. That was some time in December, 1900, I guess, we made our first settlement, something like about twenty-seven and a half cents an acre or something like that.

Q. Were you buying for other people at the same time? A. Yes.

Q. Who?

A. I grouped up quite a lot of land for Governor Pillsbury, some for John and Charles Pillsbury, picked up quite good interests for myself, and then I had interests for Gale, Snyder and had other names, I would have to look up to fresh up my mind.

Q. Now, were you paid the like amount of commission on the lands in the Puter suit?

A. I got for everything prior to December, 1900, I think it was all $.27½ an acre

Q. After that you received?

A. Well, about a year afterward, there was not so much scripping and so much business, and there was a contract about one year after that, December, 1901, at $.50 an acre.

Q. Now, did you have any other relation with C. A. Smith than to look up lands, submit them to him and buy them at a compensation of $.27½ an acre?

A. No, I could submit lands to whomever I pleased, and whenever I pleased, and that is about

(Testimony of Frederick A. Kribs.)

what I did, what **[1060—893]** I have been doing ever since I have been here. I did a great deal of business for him, for the reason that the territories that he selected covered a large expanse of country. The country suited him, and I would show all this up to him, and he would take it. Of course I would take all the money I could get to make investments.

Q. Now, if he had been dissatisfied with these purchases from the Mealeys, or through the Mealeys, for instance, what would have been the result? Would you have kept the lands?

Mr. McCOURT.—Objected to as immaterial, calling for stating a hypothetical case.

Mr. LIND.—It may be indifferently suggestive of the idea, but the idea that I wish to bring out was whether or not he would have kept the lands himself if his transaction had not been approved, as bearing —I want to place before the Court fully the actual relations between C. A. Smith and Mr. Kribs. And it is to that end that I ask that question.

COURT.—You can show whether he had authority from Smith to buy this, or whether he bought it on chances of Smith taking it afterwards.

A. Now, had you any instructions from Smith to buy these Mealey claims? A. No.

Q. Did you act entirely on your own judgment in buying them? A. I did.

Mr. McCOURT.—Well, now, if the Court please, I move to strike it out because it is leading. The witness already said he talked to Smith before he bought those claims about that territory up there, and they

(Testimony of Frederick A. Kribs.)

concluded that it would be advisable, in the interests of Smith, to **[1061—894]** group a lot of claims up there, and that was the authority he bought them on. Now, they want to show he bought them on his own hook and submitted them later.

Mr. LIND.—No, I don't say that. I don't pretend that they were bought on his own hook except in this way.

Mr. McCOURT.—Well, that was not the case that arose at all. He might have refused to give them to Smith and Smith might have refused to take them, but he did not.

COURT.—I think he may testify as to the circumstances surrounding this transaction. His opinion is probably not binding on the Court.

Q. Now, during this period, what was the status of the account, if you know, between you and C. A. Smith? A. How?

Q. Yes, whether he was in your debt, or you in his debt, or how?

A. Well, he was largely in my debt. He owed me quite a little money on former transactions—land matters—before I come here. And I did a great deal of business for him. I accounted for everything I received from him. Consequently by going and demanding a settlement by most any old time, he would be owing me quite a little money.

Q. Now, when he sent you remittances, were they sent for any particular tract, or purchased as a rule, or were they sent simply because you called for money for investment?

(Testimony of Frederick A. Kribs.)

A. Well, generally it was because I called for money for investment, and I would probably give him some idea. If I was going way off into a brand new territory or something, he knew nothing about, why I should feel that I should tell him about it; but it would be for lands **[1062—895]** that I thought he should acquire to group up with what perhaps he already owned.

Q. Now, the moneys sent to you here on the coast, were they charged to you in the accounts of C. A. Smith? Were you charged as a debtor by him for moneys that were sent to you? A. Yes.

Q. And that is the way your account has always stood?

A. Yes. I used to just simply—had at one time a Smith account—would give him credit for whatever he sent to me, and charge him for whatever lands I purchased, or any other expenses that should go to that account.

Q. Now, did he always take lands that you purchased that you may have intended to turn over to him, during this period of 1901 and 1902?

Mr. McCOURT.—Objected to as immaterial.

A. Yes. I on my own responsibility selected with scrip between 2,000 and 3,000 acres. He saw the location, and he asked me why I took it. I told him it was very heavy, and it was very nice. He says: "I haven't anything in that part of the territory, and you should have submitted it to me." I says: "All right." I went out and fixed my account over, about two hours afterwards; and come

(Testimony of Frederick A. Kribs.)

back and I says: "How does this statement suit you?" He says: "Where is the land?" I says: "Other people have got it." I says: "I am going to keep a quarter of it myself, and other people will take it." Well, he asked me some more questions about it, and he says: "You have been in a considerable rush about this." "Well," I says, "any other territories I will see that you know all about it before I go into it." He didn't **[1063—896]** get it.

Q. How?

A. He never got it, and he has not got it yet.

Q. Well, who has got those lands?

A. It is Pillsbury and Kribs have got it.

Q. Well, the point that I want to get at, when did this occur?

Mr. McCOURT.—Now, just a moment. I move to strike all that out as immaterial.

A. That was some time in the summer of 1900. I think it was July or August, 1900.

Mr. LIND.—I wish to be frank with the Court, that I wish to show by this witness the facts as they actually exist, whether the relation as it existed in fact, and as it will be developed here, and by evidence taken in Minneapolis, whether it constitutes an agency. I don't know—that is a question of law for the Court to determine in the final analysis. And it is with the view of placing the actual relations between the parties in evidence, that I have asked these questions.

COURT.—Very well. You may proceed with the examination upon that theory. I understood Mr.

(Testimony of Frederick A. Kribs.)

Kribs to testify that Smith visited this section of the country before he made any contract for the purchase of this land, and that he acted on Smith's direction as to this particular locality.

Mr. LIND.—That is true, yes.

COURT.—You may develop the other side of that suggestion.

Mr. LIND.—Yes. You may take the witness.

[1064—897]

Cross-examination.

(Questions by Mr. McCOURT.)

How long had you lived in Minnesota, Mr. Kribs, before coming here? A. About 16 years.

Q. And what business had you been engaged in there? A. Land business.

Q. What sort of land had you been dealing in?

A. Largely timbered lands, a little in mineral and agricultural; principally timbered lands.

Q. In what character did you act in your dealings in the timber lands? What was your position between the buyer and the seller?

A. Well, in some instances I would sell tracts of land and get a regular straight commission. Other tracts I would pick up would have an interest in the same. Other tracts of land I might get at a stated price and add as much more to it as I thought I could get. No particular kind of dealings.

Q. That was timber lands you were dealing in?

A. Very largely timbered lands.

Q. And some of that land was land which had not

(Testimony of Frederick A. Kribs.)

gone to patent too, during the period you were working there? A. I presume so, yes.

Q. And taken under the Timber and Stone Act?

A. Yes.

Q. And what was your business before commencing to deal in timber in Minnesota?

A. Well, for a very short time I was with my father in the hardware business, and before that I left school. **[1065—898]**

Q. And your business of 16 years in Minnesota there was, you not only dealt as an office man in the timber, but you actually went out and cruised the timber yourself?

A. I cruised a great many years, yes.

Q. You were familiar with the timber on the ground, and timber land values and the methods of acquiring title to that sort of land? A. Yes.

Q. You state that you had considerable business with Mr. Smith in Minnesota before you came here. What character of business was that that you had with him?

A. That was principally the buying or locating of timbered lands—sometimes cruising and examining lands.

Q. And how long had you been doing that in connection with Mr. Smith?

A. About six or seven years, I think; probably six years I should say.

Q. Well, were you employed regularly by Mr. Smith as a timber locator for him? A. No.

Q. A purchaser of timber? A. No, sir.

(Testimony of Frederick A. Kribs.)

Q. You dealt with him on a commission basis, did you, or upon a salary bassis, or how did you deal with him?

A. Whenever I cruised or estimated lands, I charged him so much per day. In many instances I would sell him lands at an increased price from what they would cost me. Sometimes he would allow me straight five per cent commission, then again, there were tracts where I had a certain interest, which would amount to a certain share of the profits. Whenever the lands might be sold. I had all kinds of dealings. **[1066—899]**

Q. Was he selling lands as well as purchasing them for manufacturing purposes?

A. He seldom or never sold a piece of land.

Q. How did you get your profit in those cases?

A. There was a tract of land that was not tributary to Mississippi waters, something not available for him to use, and after that land was grouped up and purchased, I resold it—resold it at a profit.

Q. That is the only case that you have in mind where you had an interest in the profits on the lands?

A. Practically speaking that is the only tract that I ever did have any interest with him in.

Q. In Minnesota? A. Yes.

Q. And had you in your dealings there been buying and selling lands for these other people—the Pillsburys, for instance?

A. Yes, sir, a great many other people; quite a large clientage.

Q. Did you work for them in the same manner

(Testimony of Frederick A. Kribs.)

as you have been working for Mr. Smith?

A. I used to go out, the first years that I was in the country, go out and explore lands wherever I would get a chance; go out and cruise.

Q. They were lands that were subject to entry under the Timber and Stone law?

A. Well, not the early days. There wasn't any Timber and Stone law when I first started cruising.

Q. When you first started cruising?

A. Yes, sir.

Mr. LIND.—It was made applicable to our State very much later. **[1067—900]**

A. For quite a number of years there was not any Timber and Stone law in that country.

Mr. McCOURT.—That amendment was when?

Mr. LIND.—My recollection is that it was not until about 1897 that the old 1877 Act was made applicable to our state. A. About 1902.

Mr. McCOURT.—I think it was 1901. When?

A. About 1902.

Q. 1892, you mean? A. 1902.

Q. Well, you were not back in Minnesota then?

A. Oh, no. About 1892.

Mr. McCOURT.—My recollection is it was about 1891.

Mr. LIND.—No, no. It is later, in my judgment. But I don't know. It doesn't make any difference.

Mr. McCOURT.—1891 it was made applicable to all the public land States.

Q. Prior to that time when you cruised in Minnesota, the land was not subject to entry under the

(Testimony of Frederick A. Kribs.)

Timber and Stone Act?

A. The large part of the Minnesota territory was advertised and put up and sold at auction to the highest bidder?

Q. That is the timber lands?

A. Yes. Well, in certain belts, without regard as to whether it was timbered or nontimbered, it was advertised generally for 90 days to four months, and the whole north part of the state at one time or other was up, was offered either at Duluth, St. Cloud or Crookston at public sale to the highest bidder. Then lands that were **[1068—901]** unsold up to a certain time were subject to private entry at $1.25 or $2.50 per acre.

Q. After it had been put up for sale and not sold?

A. Not sold, at private sale, you could go to the land office and buy as much as you pleased.

Q. Those entries there at private sale, or rather those cruisings that you made there, were they made before the land was put up for public sale?

A. Everybody would go out and look it up, you see—see what they were going to bid on, find how good it was, what they were going to pay for it.

Q. Down to 1891. After 1891, when the Timber and Stone Act came into effect, did you still cruise lands on the ground?

A. I did quite a bit of cruising, but not so much from 1892 and '93; from there on I didn't do as much cruising as I did a commission business.

Q. But you did considerable cruising for Mr. Smith in the six or seven years prior to the time of

(Testimony of Frederick A. Kribs.)

coming to Oregon?

A. Well, not a great deal prior for him, but mostly for other parties; principally the Pillsburys.

Q. Well, now, after you got down here in California, and came into Oregon, before you came into Oregon you talked with Mr. Puter down there at San Francisco?

A. I saw him in San Francisco, yes.

Q. You and Mr. Smith talked with him about those Linn County Lands? A. Yes.

Q. Now, when you went out there to see the land with McKinley, what did McKinley tell you? You were telling it here, and I didn't hear it very well.

[1069—902]

A. That people that he located on the lands were principally people which I understood at that time were all living around Albany, or in the vicinity of that territory.

Q. What did he say he was charging them for locating them?

A. My understanding was they was to have about $200, which was to cover their locating fee and their expenses.

Q. That would make an even $600?

A. Yes. That is the way it was put to me.

Q. By McKinley? A. Yes.

Q. Now, you understood the expenses would be about the same for all of them, did you?

A. That is what he told me; that they wanted to make arrangement for a $600 mortgage for each piece of land.

(Testimony of Frederick A. Kribs.)

Q. McKinley was actually then talking with you about getting the money from you? It wasn't Puter?

A. He spoke that is what they wanted to do—they wanted to get money; that Puter had been rustling, and had a hard time to get money.

Q. And did you tell McKinley what you would do?

A. I don't think I did at that time, for I wasn't very familiar with the property.

Q. How long was it after that before you told him what you would do?

A. Well after I had seen the property and come back to the railroad, I looked it over and told him I thought it was ample security, each piece was, for the amount of money asked.

Q. $600? A. Yes.

Q. You thought that was a nice piece of timber, didn't you? You liked the looks of it?

A. That is what I say, yes. **[1070—903]**

Q. And your purpose in going in there was to acquire the timber?

A. I might have had that idea all the time.

Q. Well, you did have that idea, didn't you?

A. After I had come back, that was my intentions, but I didn't advertise it.

Q. Well, Puter had talked to you down in San Francisco, and told you that he had the thing coppered so that he could get the title, didn't he?

A. He didn't say anything of the kind in San Francisco.

(Testimony of Frederick A. Kribs.)

Q. Oh, he didn't?

A. He did not. He said that there was a lot of poor fellows, the chances are they would be glad to sell, or something like that. He didn't say that he could get it.

Q. No, but he gave you such assurance that you were satisfied that that could be done? You were not loaning money on timber lands unless with a view to acquiring the lands? A. I have done it.

Q. Where? A. And didn't get it.

Q. Where? A. Back east.

Q. Yes, but you were not engaged in loaning money on timber lands here in Oregon at that time, with any view of making a mere loan?

A. No, I was not making a practice of doing anything like that.

Q. And your intention was, both of yourself and Mr. Smith, was to acquire the title to the lands?

A. We would whenever they had any title to deliver, if we could buy it right, we would buy it.

Q. And your purpose in making a mortgage here was so as to **[1071—904]** fix the title so you could got hold of it?

A. Not necessarily. They could sell it subject to the mortgage, if they wanted to.

Q. Yes, but then you figured that the mortgage would hold it? A. How do you mean hold it?

Q. Well, that it would be the means of acquiring the title.

A. It didn't take much of any one note, in the year 1900, that you could go and buy whenever you pleased, and you had really no opposition.

(Testimony of Frederick A. Kribs.)

Q. That is not answering my question. My question is, that you figured that that mortgage there would assure you of getting title to the lands?

A. Not necessarily.

Q. Not necessarily?

A. No. I might get it, and I might not.

Q. Yes, you might not, but the chances were you would get it? A. Yes.

Q. And that was your purpose in putting it on there? A. Well, yes.

Q. And you knew, when you made the mortgage there, you were going to take the deeds, whatever deeds you could get, in the name of John A. Willd, didn't you?

A. I didn't know right at that time, until we actually made a deal, and knew that I was going to.

Q. When did you make a deal with relation to the time the proof was made, and furnishing the first money?

A. When did I make the deed? **[1072—905]**

Q. The deal?

A. Somewhere just about the time the first lot had proved up.

Q. How long before they had proved up?

A. How long what?

Q. How long before they had proven up?

A. There was no bargain made before they had proved up.

Q. When did you make it with relation to proof? How long after proof?

A. It was somewhere just about the same day that they proved up—that evening or the next day,

(Testimony of Frederick A. Kribs.)

or something like that.

Q. You know, don't you, that some of the deeds were made on that very day to Willd, don't you?

A. I do, I say—that is what I say.

Q. You must have got it on the same day, didn't you? A. That is what I said.

Q. So the very minute you were taking a mortgage, you knew you were going to have a deed to Willd?

A. I took the mortgage and the note at the time that Mr. Shupe took the money over to the land office, and then I would be secured there, if they did not care to go on and deed; and they gave no deeds until after their proof was in.

Q. No, they didn't make any mortgages until after their proof was in, either, did they?

A. The papers were made out and notes were signed before the money was taken over to the land office, as I remember that.

Q. They had already made their proofs over at the land office before anything of that kind was done?

A. Of course their proof was in there, and when it come time to pay for the proof, I wanted a note or mortgage, or something, to show for it. [1073—906]

Q. Those deeds in Willd's name were in the interests of C. A. Smith—you understood that?

A. Yes.

Q. And it was C. A. Smith's money that was being loaned on the land? A. Yes, sir.

(Testimony of Frederick A. Kribs.)

Q. And the mortgages were taken in your name?

A. Yes.

Q. And it was $600 in every instance, regardless of the cost or expenses of the party?

A. I didn't know anything about the expenses of the party at all.

Q. You were dealing exclusively with McKinley and Puter. You didn't deal with any of the entrymen, did you?

A. I don't recollect dealing with any of the entrymen at all.

Q. Now, then, you understood that there were 19 or 20 of them making proof on the same day?

A. Yes.

Q. You had been around there two weeks, and you saw McKinley and Puter handling them like a gang of laboring men, or an organized force?

A. I didn't see them handling any men—didn't see but a few. Probably most of them were stopping at some other hotels, or something. I didn't know many of them by sight, either.

Q. But you did see McKinley and Puter handling them and directing their actions, didn't you?

A. The only time I ever noticed was when the different ones proved up, I was up to Mr. Shupe's office a few times, and **[1074—907]** was in there I wasn't around.

Q. When you arrived at the land out there with McKinley, they had all nice trails cut to take you through it, didn't they?

A. I noticed a fair trail to the edge of the land.

(Testimony of Frederick A. Kribs.)

After that we took to the woods, and I didn't see any trails.

Q. Oh, you didn't? A. No.

Q. You didn't follow any of those trails they had cut ready for your reception?

A. I don't know where they are—don't know yet.

Q. The day you got to Albany, McKinley was arrested, wasn't he, in connection with this very same matter?

A. I don't know whether it was that day or a little later. I am not clear as to the date when he was arrested.

Q. And Puter was there at the time—came in there and went his bail? Do you remember that?

A. I have heard that. I don't know for sure.

Q. Well, you heard it right, then, didn't you?

A. I know that McKinley was arrested. I don't know anything about the bail part of it.

Q. Did you and McKinley talk about that part of it, that he had been arrested in connection with these very claims that you were contemplating putting money on?

A. We either talked at that time, if he was arrested before we went—but it has always been my impression that it was afterwards, and I have no way in my mind to satisfy that; but if the date stated he was arrested before, it probably was. But I know the impression I got was it was nothing but a bluff on the part of the Northern Pacific, to [1075—908] scare these people out. It was dismissed, and they said there was no hearing, or nothing to it.

(Testimony of Frederick A. Kribs.)

I made up my mind there was nothing to it.

Q. We will get to that just in a minute now. And you learned right there from McKinley, or from somebody, that there had been a contest filed against the entire 57 entries that Puter and McKinley were pretending to represent?

A. Yes; by the Northern Pacific Railroad Company.

Q. And that in those contests they had charged that each and all of the entrymen had entered into a prior agreement to transfer the lands, or to take the lands in the interest of McKinley and Puter?

A. I didn't care what they charged, as long as there was nothing to it.

Q. And when they got down to Roseburg you saw the entrymen were there, weren't they?

A. I think most of them were, yes.

Q. All being marshalled by Puter and McKinley, looked after by them?

A. I didn't notice anybody being herded up. Everybody was going around with perfect freedom, so far as I could ascertain.

Q. Yes, nobody was manacled or restrained in their liberty?

A. No. No occasion for anything like that.

Q. No, they walked around the streets there, and talked in groups, and consulted with McKinley and Puter freely, without any restriction?

A. They may have or they may not. I don't know.

Q. But they did have a hearing, which you knew about?

(Testimony of Frederick A. Kribs.)

A. I heard that some time afterward, that one or two were **[1076—909]** examined—it wasn't even a full and complete hearing—and then stopped.

Q. And you knew about that, that it stopped and they effected a compromise?

A. Yes, I heard about it, yes.

Q. Yes, by which McKinley and Puter secured twenty-four of these free and unrestricted entrymen to relinquish? A. I heard it, yes.

Q. Before you had put up any money at all?

A. Yes, sir.

Q. And that there were only thirty-three claims left, which you could get? A. Yes.

Q. You heard that? A. Yes, sir.

Q. And you cut down your price a little bit on that account, didn't you?

A. I think that I thought the lands should be worth $5.00 an acre and he $6.00, and we compromised at $5.25; but that wasn't the reason for the cutting of any price.

Q. Wasn't that due to the fact that you got thirty-three claims instead of 57?

A. No. That didn't have anything to do with it.

Q. That had nothing to with it? You were willing to pay just as high a price for thirty-three claims as you were for 57 per acre?

A. It wouldn't make any difference.

Q. It didn't make any difference to you?

A. No.

Q. Now, when they did make proof, they came in in two **[1077—910]** separate lots, didn't they?

A. There was one lot along the first days of

(Testimony of Frederick A. Kribs.)

April; another lot came in the month of May.

Q. But they came together? They appeared at the same time—that is, in two groups?

A. Well, I suppose you would call it two groups.

Q. And McKinley and Puter were there at the first proofs? A. Yes, they were.

Q. And McKinley and Puter were there at the second proofs? A. I think so.

Q. And you had arranged with Shupe to take mortgages and deeds, as they came along?

A. I did.

Q. And furnish them the money to pay to the land office? A. I did.

Q. And the deeds for the first group came through, without anybody falling down, within two or three days?

A. I think the deeds were all received two or three days after.

Q. A great many of them on the very day of proof?

A. I don't know how many. I haven't looked it up.

Q. Some? The same thing was repeated at the second time? A. Yes.

Q. Yet that didn't give you any notice that there might be something wrong with it at all?

A. I had no reason to think that there was anything wrong with it.

Q. No. You thought it was all straight?

A. I talked over this contest business with Mr. Puter in detail. He satisfied me perfectly that that is the best **[1078—911]** that he could do under

(Testimony of Frederick A. Kribs.)

the circumstances. He gave me his reasons why he compromised. They were plenty good.

Q. What were they?

A. That he was not able to put up the money to fight the Northern Pacific Railroad Company. I says, "How are you going to dispose of people who have come here and filed? How are you going to get rid of them?" He says, "That will be easy enough." He says, "I am going to pick out twenty-four of these people, and I am going to get their relinquishments." I says, "They may not want to give them." He says, "I will simply tell them, 'Here, I will not furnish you any money,' and," he says, "it won't pay them to come here to prove up if they haven't got any money. After their date goes by they will forfeit anyhow." I says, "Can you do anything to save their rights?" He says, "I think I can." I says, "Are you going to give anything?" "Yes," he says, "I will give them something to get out of it the best I can. I can't fight this Northern Pacific Railroad Company. It is nothing but bluff. As long as they will take 24 and let me have 33, I will put it up in this way—that I cannot furnish any money, and they cannot furnish any money, to fight this thing; consequently it won't do any good to come here for them."

Q. That didn't give you any notice it was Puter instead of the entrymen?

A. He was locating them, furnished the money, and they would look to him. I was a stranger in the country; didn't know, practically speaking, one man from another.

(Testimony of Frederick A. Kribs.)

Q. You were not a stranger to the timber land business, though? **[1079—912]**

A. I don't claim that I was a stranger to it.

Q. Puter talked like he owned the whole business, didn't he? It was all "I"—"I" won't do this, "I" won't do that. "I will get you 33 claims, and I will give up the 24 claims."

A. I don't recollect any such conversation.

Q. Well, the conversation you have related, that didn't bring to your mind that those entrymen were acting in the interests of Puter and McKinley, did it?

A. He gave me a good, straight legal story.

Q. Yes, and you thought you knew enough about the timber law to know that that was a good, straight legal story he was giving you, and you were willing to go in on it?

A. I didn't have any reason to doubt him, and he hadn't misrepresented anything to me. I had no reason to believe that he was deceiving me, or was lying to me. Other people talked the same as he did.

Q. Yes. Well, now, that didn't give you any notice? When you had gotten these deeds, what did you do with them?

A. Sent them for record.

Q. And what did you do with the mortgages you got?

A. The mortgages, some time after, were released. I cannot tell, but at the time deeds were made, my recollection is the different notes that were signed by different people were handed back,

(Testimony of Frederick A. Kribs.)

were sent so they got their notes back again; but I cannot state just when the mortgage was released.

Q. Well, they never were released, as a matter of fact?

A. I think so. I don't know for sure. I made a release of those mortgages once. I know I did.

Q. What?

A. I am sure I made a release at one time to all of those **[1080—913]** mortgages.

Q. There isn't any release on record in that Puter case?

A. That might be the fault of the man not recording his release, then.

Q. You delivered him a release?

A. I did, some time afterwards. I can't tell when.

Q. You never paid any of those men any money?

A. I never paid them a cent of money.

Q. Not a single dollar?

A. I made a price on these lands, that I would pay so much whenever the title was brought to me. I did not pay them a cent of money.

Q. Now, those Willd deeds, did you send them for record?

A. I think so, but I am not positive. I cannot remember back ten years ago about all these little details.

Q. Didn't you send some of them back East, and have them come a roundabout way, and get recorded under Willd's name?

A. I do not remember about that at all.

Q. If the record shows that Mr. Willd sent some

(Testimony of Frederick A. Kribs.)

of those deeds there for record, that would be the way it was done, wasn't it?

A. Well, it would look that way.

Mr. UELAND.—Mr. District Attorney, I think you would find the dates of recording following the dates of the deeds so close they could not be sent East.

Mr. McCOURT.—I have some abstract showing Mr. Willd offered the deed for record. Others show Mr. Kribs offered them for record—some of the deeds.

A. Haven't we any abstracts here to show us about these things? **[1081—914]**

Mr. McCOURT.—I will look at it at noon.

Q. How long after you had gotten these deeds and mortgages did you send the deeds and mortgages to Mr. Smith? A. I don't know.

Q. Did you ever send them? A. I think so.

Q. Did you ever send him the mortgages?

A. I am not able to say about those papers. Naturally enough, I would think I would keep them, and naturally enough, they belonged to him, I would send them to him. I am not sure about that.

Q. They all belonged to him?

A. I haven't looked that up, or thought anything about it for ten years, so I cannot answer you.

Q. Did you collect any interest on these mortgages?

A. No, I did not. I am not sure about that, but I don't think that I did, because the deeds were taken very soon thereafter, but I cannot tell about that. Have no records to post me up about that.

(Testimony of Frederick A. Kribs.)

Q. And this man Willd—were you acquainted with him?

A. I just knew of him. That was all. I hadn't any acquaintance with him.

Q. When did Mr. Smith instruct you to take a conveyance in the name of Willd—before you came out here at all?

A. I think it must have been after I came here. I might have wired him that "I am going to buy these lands, and how do you want the title taken?" or something like that. I have no records to show that.

Q. And didn't you have Smith hold off sending you money to cover that deal while those contests were pending there?

A. No, I think not. I think the account would show about that time that I made a draft for the money, I think. **[1082—915]**

Q. I don't think you drew for that money. It came along itself.

A. Come along—how do you mean?

Q. Well, you didn't draw through any bank here for it? It was sent by Mr. Smith on a New York bank to you?

A. My recollection is that I made a draft on him, but I am not sure about that.

Q. Well, now, how much land did you buy for Mr. Smith in 1900, just approximately?

A. Aside from these claims in Linn County there might have been eight or ten other pieces scattered around the country. Nearly all of the business was lands located by the use of lieu land scrip or forest reserve scrip.

(Testimony of Frederick A. Kribs.)

Q. About how many acres would that aggregate?

A. Oh, I should think—it is only a guess—fifty or sixty thousand acres maybe.

Q. That is during the year 1900?

A. I think so.

Q. Now, that trip that you and Smith made up there in May to look over lands, you discussed at that time, that time you saw him, the advisability of getting other lands in that locality?

A. I think that we possibly talked it over.

Q. And at the time this contest business was settled up, did you have any conversation with Puter then about acquiring those 24 claims from the Northern Pacific Railroad Company a little later?

A. I think that that conversation about the railroad lands was taken up by Mr. Puter with Mr. Smith, I think. I don't recollect much conversation about what the railroad **[1083—916]** company got.

Q. Did he acquire them from the railroad company afterwards? A. No, sir.

Q. Never did get them? A. No, sir.

Q. They were in this same locality, on this Rock Creek, as you call it? A. Yes, sir.

Q. Well, now, you state that it was when Puter and Smith had a row that you first heard of trouble here. When was that row?

A. It must have been some time in the winter of 1900 or spring of 1901. It was quite a long time after these lands were taken, and it was after two different contracts had been made to pick up redwood lands in Humboldt County, and those contracts were nearly

(Testimony of Frederick A. Kribs.)

completed. It was after that when this trouble started. It might have been later. I cannot set the time.

Q. It was after they had modified their contract as to the Humboldt lands?

A. Well, the Humboldt County deal I know but a very little or anything about only from hearsay.

Q. Well, was it the time that Smith gave Puter a due-bill for ten thousand dollars—$10,465.00?

A. Well, Puter, I believe, obtained that due-bill in 1902, and I think they were not on so very good terms just prior to that time. But I thought that they fixed a settlement, and perhaps their feelings modified to quite an extent; yet when it broke out good and hard it was sometime after that.

Q. Sometime? A. After that due-bill.

Q. After the due-bill was made? **[1084—917]**

A. Yes, some time.

Q. And that was the time—that was the first time you heard of the trouble?

A. No. I cannot set the date. I know that whenever they had their trouble, I run across Mr. Puter up here at Salem, and he was telling me—now, I cannot give you the date; I have got no way of fixing that; but it was quite a long time—it was a long time after these claims were taken, and it was after the two deals in Humboldt County.

Q. And after the due-bill was given?

A. Well, I know that they got out at the horns in good shape some time after that due-bill. I know Puter wanted some money, and Smith claimed there

(Testimony of Frederick A. Kribs.)

was some things in Humboldt County was not fixed up. Yet there was strained feeling between them sometime prior to that. When it was I could not tell you.

Q. It was some time after they had this trouble about this due-bill, and got in this extra strained condition that Puter threatened to you that he would go to Washington and tip these claims off—prevent them going to patent?

A. No, I think it was prior to that.

Q. How long prior?

A. That I am unable to say. It might have been six months or it might have been a year, the time they had their first trouble; not a great while after the redwood contract, he was making some threats.

Q. Well, was Mays mentioned in connection with it?

A. Not in connection with this trouble that he would make, but Mays' name was mentioned, I know, about the time that he obtained his due-bill—something like that. I fix that date for the reason that they both started East somewhere about the same time, and I think that was 1902. **[1085—918]**

Q. That is the time he told you that he would go to Washington and kick over that business if Smith did not come through, wasn't it?

A. He said so at that time.

Q. That he would have Mays do it?

A. Well, I don't know. My impression is that he was going to talk to the Secretary of the Interior himself; he was going to do the business personally.

(Testimony of Frederick A. Kribs.)

Q. And right away he went off East, didn't he, to see Smith about a settlement? A. Yes.

Q. And you notified Smith he was coming?

A. Yes.

Q. Told him he better keep out of his way a few days? A. I did not.

Q. Did not? A. No, sir.

Q. Now, then, that was in April, 1902, wasn't it?

A. The time they went East it was. But there was trouble between them some little time before that; and that is when the threats were made up here at Salem, I am sure, but I cannot tell you when.

Q. Well, how long before, now? I want to fix that.

A. Well, you will have to fix it yourself. It is some little time before that—four or five or six months, possibly. I cannot tell you.

Q. Well, you had been taking affidavits, or Stratford had been taking affidavits for fifteen months before that due-bill was made, hadn't he?

A. I think so.

Q. And Puter had been helping you get those affidavits? **[1086—919]**

A. No, I don't think he helped me very much. Mr. McKinley—

Q. McKinley and Tarpley had helped you?

A. McKinley had helped me and Tarpley had helped me. I didn't see very much of Puter during the time the affidavits were taken. He was not around very much.

Q. Puter was all right long after those Stratford

(Testimony of Frederick A. Kribs.)

affidavits were taken, wasn't he?

A. Let's see—I think he was feeling fairly good at that time.

Q. What?

A. I think, while he was a little sore at Mr. Smith, but I don't think he was so hostile as he was later on.

Whereupon recess was taken until 2 P. M. **[1087—920]**

Portland, Or., May 5, 1910, 2 P. M.

F. A. KRIBS resumes the stand.

Cross-examination (Continued).

(Questions by Mr. McCOURT.)

You have continued to represent C. A. Smith here in Oregon since you first came here up to the present time, have you not?

A. Yes, I have done more or less business all of the time.

Q. Looked after his different lands. You have purchased all the lands for him that he has purchased in Oregon, did you not?

A. Nearly all of them, yes.

Q. And how many acres does that amount to all together, in different counties?

A. Oh, by guess, I think a couple of hundred thousand, maybe. It might not be so much as that.

Q. From the time you came on here you commenced purchasing in Coos County and Douglas County and Lane County, too, did you not?

A. Yes.

Q. Mr. Smith came here, did he, frequently, and

(Testimony of Frederick A. Kribs.)
looked over these different territories that you were buying in?

A. He was here occasionally, yes.

Q. He went down into Coos County with you, didn't he, early in 1900?

A. He was there, I think, some time in the summer of 1900. Summer or fall.

Q. Looked over the holdings, or the territories in which you were buying in Douglas county, as well?

A. We took a general trip through Douglas and Coos on **[1088—921]** horseback, looking after some of the territory.

Q. At that time—he was here in May when you and Puter made the trip, you didn't go down in Coos at that time?

A. I think not. I think we started to California that time.

Q. It was in August, was it not, that you went down into Coos?

A. We were there in August or September, I am sure.

Q. Well, he was here quite a bit in August and September, 1900, for some little time, was he not?

A. I think it took us about ten or twelve days to make that trip, and then I think he went away after that.

Q. And you and he communicated, I suppose, frequently, about these matters, right along by letter—telegram?

A. Yes, I naturally wrote him, yes.

Q. And whenever you would close a deal or ac-

(Testimony of Frederick A. Kribs.)

quire a tract of land you would notify him immediately?

A. Well, I presume in a good many instances I did, and perhaps not, when I would be scripping lands. I would probably make a general report from time to time, something like that.

Q. That scrip, how did you acquire that? Did he acquire that in the east or did you acquire it here for him?

A. That we generally bought from the different railroad companies. I bought it out here, most of it.

Q. That was purchased out here. You negotiated for the purchase of that and attended to seeing that the title was correct? A. Yes, sir.

Q. All those expenses, examining abstracts and attending to title, that was paid generally out of this C. A. [1089—922] Smith account which you carried?

A. Yes.

Q. You reported all these different expenses that you made? A. Yes, sir.

Q. Well, for instance, in the employment, now, of F. P. Mays in connection with these Puter entries, that was reported to Mr. Smith, I suppose?

A. I think that I had rendered a bill to him whenever I would make a report for the moneys I had paid out.

Q. And when you employed Mitchell and Tanner the same thing occurred?

A. Yes, some time or other the report would show what moneys I had paid.

Q. Did you submit your checks to him as a voucher

(Testimony of Frederick A. Kribs.)

or your bank statements, or how did he check up on the amount of money you had spent, to see whether your account balanced properly?

A. Generally I would make him a statement and go over the statement with him.

Q. You went to Minneapolis quite frequently during those days?

A. Generally a little less than once a year.

Q. About twice?

A. It would not be quite that. I guess about on an average eight or nine months, maybe. About once a year, something about that.

Q. You would go over the entire account and give the expenses that you had been at in connection with any tract of land you were credited with?

A. Yes.

Q. He didn't attempt to deduct any of your expenses from your commission? You got your commission straight, and he **[1090—923]** stood all expenses?

A. Well, my personal expenses, like living at the hotel, or my family, I had to pay that myself.

Q. Yes, he didn't pay that? A. No.

Q. But the expenses connected with the acquisition of the land itself, or procuring the title to it, or protecting the title, that expense—

A. That expense would go to him.

Q. Well, now, about this Mr. Puter business. Isn't it a fact that the first time that you had any trouble with Puter about anything was pretty well up to the time the patents issued, just a month or so

(Testimony of Frederick A. Kribs.)

before the patents issued—in fact, after you had received notice that the patents were going to issue?

A. No. They had commenced quarreling very shortly after the termination of the second redwood contract, whenever that was.

Q. That was 1902, wasn't it?

A. No; I think it was some little time before that?

Q. As late as January, 1902, Puter was offering his services to get those patents out, wasn't he?

A. He was pretty sore at Mr. Smith, and at the same time he felt like doing what he could to perfect the titles to the lands. And I know there was a difference between them, and, from what I could learn, I know I had an idea there was some money coming to Puter, but there were quite a number of titles in the redwoods that were quite difficult to fix up, about some old taxes, etc., and that seemed to stand in the way of them fixing up their settlement.

Q. Now, I will show you a letter dated February 8, 1902, **[1091—924]** to Mr. Puter, and ask you if that is your letter? A. Yes, I wrote that.

Q. Mr. Puter didn't seem to be very hostile there, did he?

A. There was no hostility between him and I at that time.

Mr. McCOURT.—I offer that in evidence.

Received without objection, marked "U. S. Exhibit 196" and read as follows:

[U. S. Exhibit No. 196.]

"Portland, Oregon, Feb. 8/02.

S. A. D. Puter,

Chicago,

My dr sir:

Don't do anything at Wash. concerning entries yourself. Think matters are progressing properly now. And when you return to Ore., I will be here & we can then talk over matters.

Think from what I learn any interested party going to D. C., to talk over matters at this time would not help himself out to any extent at this stage of game and just where the matters now stand. I got that good & straight from inside.

Truly yrs.,

FRED A. KRIBS."

Mr. McCOURT.—Written from Portland, Oregon. Directed S. A. D. Puter, Chicago, and forwarded to Milwaukee, Wisconsin.

Q. What did you refer to as the inside there?

A. I was talking considerably those times with Mr. Mays, and he said he had matters working along all right, and he did not need any interference on the part of any one in the matter.

Q. Had you told him that you had Mitchell & Tanner employed? **[1092—925]** A. Told who?

Q. Mays?

A. I don't think that I said much, if anything, to Mr. Mays about it. I talked quite a long time before that with Mr. Mays, and had asked him if he had done anything, and he says, "Not yet; not yet," or some-

(Testimony of Frederick A. Kribs.)

thing like that; and I got the impression that he was not trying to do much of anything, so I hunted up and talked with Judge Tanner about the matter; and my recollection is that I did not say anything particularly to Mr. Mays about Judge Tanner working on these cases.

Q. Now, that letter is dated February 8, 1902. It was about a year prior to that you had employed Mays?

A. Yes, I had employed Mays some time before that.

Q. Well, then, when you employed Mays, you had heard, before you employed Mays you heard of some trouble with these entries?

A. The first trouble that started these—the first protest that started was an old protest made by the Northern Pacific Railroad Company about the time that these proofs were made. I heard that for quite a little while after the proofs were made. It was made by Thomas Cooper, Land Commissioner at St. Paul.

Q. Yes, that they were fraudulent, and that they intended to carry them on.

A. They didn't do it.

Q. To further protest against patents issuing on them?

A. No; there was nothing about the patents. It was a protest against the people who filed on the lands in opposition to their scrip. They wanted to knock the claimants out and have their scrip hold every acre of it.

(Testimony of Frederick A. Kribs.)

Q. Yes, that was the 33 claims you had? **[1093—926]**

A. That was the whole business, the whole 57.

Q. They had already got 24 of them?

A. No, this protest, as I understand, was written before anyone appeared to prove up. The only way I got—

Q. You employed Mays, who had formerly represented the Northern Pacific Railroad Company.

A. Well, he was recommended to me as being familiar with land matters.

Q. Who recommended him to you?

A. Mr. Puter.

Q. Yes, you talked to Mr. Puter about it?

A. Well, when I sold these lands, I knew that heretofore, if titles were not fully perfected, there was always a certain amount of money kept back, and I know, as soon as I could get titles perfected, I would be at liberty to call for that money, and I could have it to use out here.

Q. What was that about money?

A. A certain amount of money was always held back until titles were fully completed, and when I could make a report that titles were fully completed, I would have a right to demand that money.

Q. Who from?

A. From Mr. Smith in this case, because he is the man that got the lands. Whenever the titles were fully completed, I would have a right to have that money—demand it.

Q. That was part of your 27½ cents an acre?

(Testimony of Frederick A. Kribs.)

A. Yes. That is what it was adjusted at.

Q. You expected that to be about what it was? —25 to 30 cents an acre, that you were going to be allowed?

A. Well, no, I expected to get more than that; had quite a fight about it. **[1094—927]**

Q. You did? A. Yes.

Q. You thought you would have more money?

A. Yes.

Q. Well, now, right off the reel there, when you didn't think there was anything wrong, you agreed to pay Mays $50 a claim or $1750?

A. That is what he asked.

Q. And you agreed to give it? A. I did.

Q. Well, didn't you think it was a pretty serious proposition, or you would not have been paying him that much?

A. Well, I notice all these attorneys charge pretty good for whatever they do.

Q. Wasn't that a pretty good stiff fee for a matter in which you could not see any fraud?

A. Well, it wouldn't be any great charge—I thought it was about double the amount that should be charged, but it was no great fee for to charge so much against each individual piece.

Q. $50? A. Yes.

Q. Well, what did you expect there was to do in each case?

A. To look up the entries, and have them examined at Washington, see if they could be taken up, and the patents issued, and the cases closed.

Q. Well, then, what state had your mind reached

(Testimony of Frederick A. Kribs.)

when you got around to hiring Mitchell & Tanner?

A. How is that again?

Q. Had you any more ground to suspect there was anything wrong with them when you hired Mitchell & Tanner?

A. No; but Mays didn't seem to get any action —didn't **[1095—928]** seem to do anything. I couldn't get any satisfaction out of him. He had performed no work, and I couldn't find that he would, and I got tired of waiting on him.

Q. Now, did you, when you went to take affidavits—you started in taking those affidavits in July, 1901, in these Puter cases, didn't you?

A. I think they were taken about that time, in the summer of 1901.

Q. You went around and saw that some were taken, didn't you?

A. I was around in a few instances.

Q. Did you go to Brownsville?

A. I think I was at Brownsville.

Q. You were present there when they were taking the affidavits? A. Yes, sir.

Q. Who else was present in the room?

A. I don't know that I was particularly around the room, or anything like that, when they were being taken; but I was in town. One of the principal things is, that I wanted to see that they would get everybody if possible, and get an affidavit from them, for that was what was called for.

Q. You took a stenographer up there, didn't you, to take them?

A. I took one up to hurry up matters so that we

(Testimony of Frederick A. Kribs.)

would not have to be gone any longer than possible.

Q. You hired Miss Harkness of Albany?

A. I don't know her name, but it was some young lady of Albany.

Q. And you were present when the witnesses were testifying? **[1096—929]**

A. I might have been and I might not. I don't remember.

Q. You got copies of all the affidavits that were made? A. I asked for a copy afterward.

Q. You had one—there was one struck off there at the time, which you later got.

A. I don't know about that.

Q. You made an affidavit yourself?

A. I did.

Q. You had it printed?

A. I never had any printed. All I had was typewritten affidavits.

Q. Yes, but you got those printed, didn't you, that went in with those 33 cases?

A. I never had any printed. I never heard of that before.

Q. What?

A. What I had was typewritten—written on a typewriter. This young lady wrote them.

Q. Yes, she wrote just one for each claimant, but those that you made, you and Puter made, didn't you have those printed?

A. Not that I ever heard of.

Q. You knew they were printed?

A. I never heard of it until since this trial started up.

(Testimony of Frederick A. Kribs.)

Q. Isn't it a fact, now, that you paid, even paid, for having those printed, and had them printed?

A. I have no recollection.

Q. You were consulted about it before they were printed? A. I have no such recollection.

Q. They must have been printed here, because they are signed here by the agent. The agent was here, wasn't he?

A. Some of the affidavits were taken here, some I think at Salem, some at Albany, I think some at Roseburg; but so far **[1097—930]** as having any printed by printing press, or anything like that, I don't know anything about that.

Q. Don't know anything about that?

A. No, sir.

Q. You heard those witnesses testifying there that they had got $600 in cash from you?

A. I don't recollect of being personally present when hardly any of them were giving their affidavits.

Q. Don't you remember that they testified to that right in your very presence there, that they had got the money from you?

A. If they did, they testified they got their money from me, and gave a mortgage for $600 apiece.

Q. Yes, and that they dealt with you personally, when you knew they had not.

A. I don't remember any such statements being made in my presence.

Q. Well, didn't you read the affidavits after you got them?

A. Yes, but I didn't make the affidavits. They

(Testimony of Frederick A. Kribs.)

made their own affidavits.

Q. Well, you saw they were not true, after you got them then, didn't you?

A. Well, the way I interpreted that was this: That there was $200 in excess of the $400 which they received.

Q. Yes, but when a man said that Kribs paid him the cash in coin, when you hadn't paid him a cent at **[1098—931]** all, you knew that was not so? You could not interpret anything into that could you?

A. I did not make the affidavits, and I am not responsible for what they swore to.

Q. You are not responsible?

A. No, I am not.

Q. But when you knew they were not so, yet you sent them on to Washington, to mislead the officers of the Government?

A. I didn't have them in my possession, or didn't send them on to Washington.

Q. Well, you had them sent on? You knew they were going to be sent on?

A. I figured it was a $600 mortgage, with the $200 that I kept out at request, and put in Mr. Puter to protect him.

Q. Well, you saw Puter's affidavit, didn't you?

A. I don't remember about his at all.

Q. When he talked about a man by the name of Hanlon representing Willd. Do you remember that? **[1099—932]**

A. I wasn't there when he made his affidavit.

Q. You saw it? A. I may have seen it.

(Testimony of Frederick A. Kribs.)

Q. Well, we will see about your own then. You made yours, didn't you? I refer to one of the printed forms, which was taken from the original, and appearing in Government's Exhibit 2.

Mr. LIND.—Is that the Pilkington?

Mr. McCOURT.—Well, it is the same one as is in the Pilkington. This is the Atkinson case I have in my hand.

Q. "You may state how it happened that each of the loans was paid off within a very short time after the loan was made, and before the loans became due? A. Mr. Stephen *a.* D. Puter made a sale of the lands and his parties requested a clean title with no encumbrances against the land. I released these mortgages and charged about the amount of interest at the time of release, as I would have received when the same had become due." Now, Puter's parties were your parties, weren't they? You were Puter's parties?

A. Yes. He did all of the purchasing. I did not purchase a single acre from a single man.

Q. Well, you sought to represent that it was somebody entirely disconnected with you that was purchasing the lands, didn't you?

A. Not particularly. I looked at it taking what was the record title. The record title showed that Willd was the owner of the land.

Q. Yes, but you and Willd were the same thing, so far as the transaction was concerned? You did all the business? A. No, I did not.

Q. You didn't? **[1100—933]**

A. Mr. Puter purchased every single acre of that

(Testimony of Frederick A. Kribs.)

land, and when I paid him the check of $7359.00 that practically cleaned up everything except the $1,000 of the first lot of claims, when he brought the deeds to me.

Q. Yes, but the parties—his parties that wanted a clean title were you and Smith?

A. I had no personal interest in the title as an owner.

Q. No, but you were representing the owner there, weren't you? A. Yes.

Q. The idea that you sought to convey here was that Puter had sold the lands to somebody entirely separate and apart from you, wasn't it?

A. That is not exactly it. I wanted to confirm as to what the records would show the legal title.

Q. Why didn't you tell them that it was Willd; that Willd was the man, that you represented Willd, and that you took the title, and that you loaned the money?

A. I did tell them that I loaned the money.

Q. You didn't tell them you took the title though?

A. Well, the legal title went to Willd, and Mr. Puter obtained the legal title in the way of a deed.

Q. Who put up the money?

A. Mr. Puter did.

Q. Who put up the money to buy the lands?

A. Mr. Puter.

Q. And to make proof?

A. I put up the money to make the proof, and out of his own money he procured the deeds; and when he brought the deeds to me, then I figured up

(Testimony of Frederick A. Kribs.)

what was coming and gave him a check for it.

Q. Whose money was it that was put up in the Land Office? **[1101—934]**

A. It was Mr. Smith's money.

Q. Whose money bought the land?

A. Money that Mr. Puter had.

Q. Whose money bought the lands when it went to Willd?

A. I presume it was Puter's own money, for he did not have any of our money in his possession at that time.

Q. Whose money was it that went to Puter when the deeds to Willd were turned over to you?

A. Smith's money.

Q. Yes.

A. When the deeds were turned over?

Q. Whom were the deeds to Willd intended for, the beneficial interest? A. Mr. Smith.

Q. Well, the man that put up the money and the man that got the beneficial interest was the same, wasn't he?

A. Yes, but not in procuring the deeds. It was not Smith's money that paid for the deeds when they were obtained.

Q. It was not?

A. No. I know the first money I gave him. You have got the check and I have got a memorandum of it.

Q. Yes, I know all about that too. He didn't pay them enough money to need very much, did he —$100 apiece.

(Testimony of Frederick A. Kribs.)

A. He said he had money, and money in the bank.

Q. "Q. Are you acquainted with John A. Willd? A. I have never personally met the man, but I have had some little correspondence with him since he became the purchaser of these lands. Q. State whether or not you had any connection with the sale of these lands to the said John A. Willd, and if so, state the nature and extent of the same. A. I had nothing to do with making the sale."

A. I did not. I did not. I did not procure a deed, or **[1102—935]** buy a single acre of it.

Q. You were right there, though, ready to take them when Puter came in with them, getting them for you?

A. Then, I took and paid him for them.

Q. And Puter would not take them in Willd's name unless he knew that you were going to take them, would he?

A. Well, I don't know whether he would or not.

Q. How did Smith inform you that he wanted those deeds in Willd's name?

A. I may have wired him, and may have asked him in whose name they were to be put.

Q. At least you knew, if you wrote him, there was something doing about the sale sometime before the proof, wasn't there?

A. I probably telegraphed him.

Q. And if you telegraphed him, you had to telegraph him the day before the proofs were made in order to get your answer there so as to take those deeds on the day that proof was made?

(Testimony of Frederick A. Kribs.)

A. Not necessarily.

Q. You think you got up early in the morning and telegraphed him, and got word back here by noon that you could take deeds in the name of Willd, eh?

A. I ain't thinking about it one way or the other, for I don't just recollect about it. It is ten years ago.

Q. The chances are it was several days before you communicated with Smith in regard to that purchase, and he informed you to take the deeds in the name of Willd?

A. Nothing of the kind. I didn't telegraph several days before.

Q. Well, how many days before?

A. I don't know whether I telegraphed the same day that proofs were made or not. I cannot tell exactly. But I know it **[1103—936]** was not several days before.

Q. Well, it was at least one day before, wasn't it?

A. I might have had his name; asked him, if I wanted to purchase any lands in the name of some one, who he wanted me to take the titles to.

Q. You might have had it when he was down in California there, for that matter?

A. I don't know.

Q. Yes, you might have had instructions to that effect even when you left Minneapolis, may you not, to take the title in the name of any person?

A. I don't recollect anything about that at all.

Q. What?

A. I don't recollect anything like that at all.

(Testimony of Frederick A. Kribs.)

Q. You there again sought to convey to the Department that the man who had furnished the money to make proof had no connection with the man who had furnished the money to buy the land, didn't you? A. It might read that way.

Q. Well, that is what you intended to convey, wasn't it?

A. I wanted to convey that my loaning of the money was by me, and the record title showed, on the records of Linn County, to be in John A. Willd. That is what I wanted to convey.

Q. And you wanted to convey that neither one of you were connected one with the other?

A. Not necessarily.

Q. That is the idea you did convey, wasn't it?

A. Well, you might interpret it that way, if you like.

Q. Now, then, did you ever hear of John Hanlon? A. I cannot call that name.

Q. Now, Puter says that he did not adopt the name of Hanlon. Did you furnish it? **[1104—937]**

A. I don't recollect that name at all.

Q. Did you converse with Stratford about it and suggest to Stratford he fix up an affidavit with the name Hanlon in it?

A. I did not. Stratford took his own affidavits. I didn't make any affidavits for him.

Q. You didn't? A. No, sir.

Q. And you had nothing to do with making them?

A. No, sir. Except what I made myself.

Q. But you scrutinized them pretty carefully to

(Testimony of Frederick A. Kribs.)

see that they were all right, didn't you?

A. When I had the copies, why, I read them over.

Q. And you saw that they were not true?

A. Well, it was not for me to go around and correct him up after he had taken affidavits.

Q. Well, but wasn't it a remarkable fact that the falsehood was all against the Government and in your favor? A. Well, I don't—

Q. You would have taken a good deal of trouble if you had found some story in there against you, to go around and correct it up, wouldn't you?

A. Where is the particular story so strong against the Government there?

Q. In the first place, in your effort to make it appear that you and Willd had no connection, when you were as thick as you could get; in the next place, in these affidavits, you have been sitting here day after day and hearing me read them here, where the entrymen testified they had received the cash, $600, from you, and had their dealings with you; and in the next place, when they would testify about selling the land that you had again paid them $800 **[1105—938]** in cash?

A. Well, they were mistaken in it, as I did not have any personal dealings with any of them.

Q. And when they testified that they had received $800, or $850, from you, when you knew that Puter and McKinley were getting a big rake-off of it, and they could not possibly get any $800.

A. At the time those affidavits were made, just exactly what these different people received out of it, I never did know.

(Testimony of Frederick A. Kribs.)

Q. No. Well, now, listen here about this Puter business. I will read a little of it, and then I will ask you questions. "Q. State what connection you had, if any, with the sale of the lands entered by these parties, or either of them, to John A. Willd?" —that is Puter— "A. Several days after final proof was made, Mr. Hanlon introduced himself to me as an agent of parties in Minnesota and wanted to know what I would take for my claims and if I could secure an option on all of the claims in that locality. He made me an offer, and I went to work and secured the titles to most all the claims. Q. What do you mean by your statement that you procured titles to most of the claims? A. I mean an option for a deed to the property for certain consideration. Q. Give the full name of this man Hanlon, if you can. A. John E. Hanlon." Now, you knew then that there hadn't been any John E. Hanlon connected with that transaction as far as Willd was concerned, didn't you?

A. I wasn't there when—

Q. I understand; but you got it right away, and saw it before it ever went to Washington?

A. I didn't get it right away.

Q. You had it before it went to Washington?

[1106—939]

A. I may have had it before it went to Washington. Mr. Puter was not in this country then. He was traveling back and forth, and I seldom would meet him—not very often.

Q. You knew that wasn't so, if you saw it at all, didn't you? A. Yes, I would.

(Testimony of Frederick A. Kribs.)

Q. "Q. Who paid the parties for the land, you or Mr. Hanlon? A. I paid most of them. Mr. Hanlon paid none of them. Q. Who furnished you the money to pay the parties for the land? A. After I had interviewed all of the parties and found out what I could get their claims for, I informed Mr. Hanlon. He paid me the money to pay to those parties as fast as I could secure deeds. Some of them I paid myself, others I left the money with Mr. Kribs and McKinley to pay on receipt of deeds." Did he leave you any money to pay on receipt of deeds? A. Who is that?

Q. Mr. Puter? A. No.

Q. "Q. Was the money to pay for all of these lands furnished you in a lump sum, or in different amounts at different times? A. It was furnished at two or three different times. Q. Was the money paid to you in cash or were you given checks or drafts? A. It was paid in cash." Now, you knew all that stuff wasn't so, didn't you?

A. I didn't make that affidavit.

Q. I understand. You knew it, and saw it?

A. I didn't inspire the affidavit, and I was not there when it was made. He passed in his own affidavit to Mr. Stratford.

Q. Puter didn't have any further interest in the land, did he? You and the people you represented were the parties interested?

A. He probably was making as good an affidavit as he could, to push the thing along and get his Humboldt settlements. **[1107—940]**

Q. He was trying to job the Government so as to

(Testimony of Frederick A. Kribs.)

stand in with you people?

A. Well, you can call it jobbing or whatever you please. I did not inspire the affidavit, and it did not concern me what he swore to. He could do his own swearing.

Q. You were willing to let it go on up to the Government in order to get your title?

A. He passed through hurriedly, and said he was going to make an affidavit. I didn't see him. I was not there. He went on to California, and I didn't see him for some time afterward. It was quite a little while after those affidavits were made that copies of them were given to me.

Q. Well, now, you say you bought that land from old man Stratford there, just to stand in with him?

A. Well, not exactly that. There was nothing said about standing in; he didn't hint that way, or didn't talk that way. He says, "I have got this land, and I would like to sell it."

Q. Didn't he tell you next day he had sent in a favorable report on your claims?

A. Nothing of the kind.

Q. You didn't know about that at all?

A. He didn't say anything like that.

Q. Did you talk about the claims the time you bought the land? A. What?

Q. The day you bought that land, did you talk about the claims?

A. I have no recollection of talking about these claims then.

Q. You had paid him quite a few little sums of money before that? **[1108—941]**

(Testimony of Frederick A. Kribs.)

A. I think I let him have some small sums two or three times before. I don't recollect the amount.

Q. Well, now, when you got old man Loomis to take the Josephine Jacobs affidavits, or dicker with them, was that just being nice to Loomis, too?

A. No, sir. It was a business proposition easily explained.

Q. What was it?

A. I went up to hunt up Mrs. Jacobs and her daughter, living uptown. I didn't know them very well. They said that they had sold their land about a year before; that there was money coming to them that Puter had promised to pay them; but I understood—a year had elapsed or something like that, and he showed no inclination to pay what was coming to them, and they would not sign any more papers unless they got their pay. And I asked them what was coming, and I don't recollect what they said. I came back down to the hotel. I happened to run into Mr. Loomis. He had nothing to do with these cases, as I know about. Mr. Stratford was the man that was going over to take those affidavits. I told Mr. Loomis what the matter was. He said he had met them several times, and knew them, and would go up there and have a talk with them. I said, "All right. I wish you would. So Mr. Stratford can get an affidavit of these two parties"—he said he would. He came back again. I don't recollect—I think it was $75, it might have been more or less; I could not get the check; and he said they wanted that before they would sign any affidavit. I says, "All right. What do you think about it?"

(Testimony of Frederick A. Kribs.)

He says, "You better have them." "Well," I says, "Will you get them?" He says, "I will recommend"—as I remember it—"I will recommend that they do give affidavits to Mr. Stratford when **[1109—942]** he comes there. And whatever the amount was I gave him a check to go and pay them. And them when Mr. Stratford came to town he said that "the Jacobs people live up here, and will give an affidavit; they was kicking some about some old deal, but," he says, "they are all right now." They went up, and Mr. Stratford got the affidavits from them. I didn't consider I was doing anything wrong in the matter. The Government demanded it, and I was going to try to get the affidavits if I possibly could.

Q. They told you personally that Puter had not paid them all that was coming to them?

A. They did.

Q. You had been there yourself, and they told you that?

A. I went up to see—found out where they were to see whether I could get them to give the affidavits.

Q. Now, then, didn't they tell you that—instead of demanding money from you—they told you they wanted to see Puter?

A. Nothing of the kind.

Q. That he was a friend of theirs, and they wanted to talk to him, and you concluded they were holding you up? A. No, sir.

Q. They wanted money, and you sent Loomis up post haste with the coin? A. No.

Q. How much did you give Loomis out of it?

(Testimony of Frederick A. Kribs.)

A. I don't know whether Loomis got anything out of it or not—whether he gave it all to them, or whether he kept some of it; I don't know.

Q. How much of a check was it you gave to him for them?

A. Well, I think it was $75, but I am not sure. **[1110—943]**

Q. What did you give him that other $150 check for, about a year afterward?

A. He asked me for $150—that he was hard pressed, and wanted to use some money and that he would pay it back again, etc.

Q. He never did, though?

A. Well, I don't—I don't recollect of him ever paying it.

Q. You never asked him for it?

A. He said that he paid it down to the McClellen House to Smith, the hotel clerk.

Q. No, that was the $100 you gave him the first time you met him he said he paid back.

A. Well, whatever it was. I have no records of any of those. I know there were some payments made, but the amounts I cannot tell you.

Q. Stratford didn't pay you back any of those loans you made him, either, did he?

A. No, he did not.

Q. Now, you say none of these things caused you to think that there was any fraud connected with these entries at all.

A. I had no reason to think that there was any fraud connected with these entries. I attributed the trouble to the protests made by Thomas Cooper

(Testimony of Frederick A. Kribs.)

at or about the time these people filed on this land, and long before I ever came to this country.

Q. You never heard of Thomas Cooper butting in on it anywhere along after that?

A. He wrote a letter, which was filed in connection with these lands, and it was his letter that I am told caused these investigations.

Q. Well, those letters were filed long before the contests **[1111—944]** were filed, weren't they?

A. The letters were filed somewhere about the time, as I understand, the railroad company made the protest, or something like that.

Q. Well, after the railroad company had taken those 24 claims, you never heard anything more from the Northern Pacific at all about it?

A. No; but the letter was on file in Washington, and I understood, and I was told that that was what started this up.

Q. And all these affidavits that are not in accordance with the fact, then, were made in order to head off the Northern Pacific Railroad Company?

A. No.

Q. Not to conceal any fraud that you fellows knew of up there in connection with the matter?

A. There wasn't any fraud that I knew of at that time to conceal. I hunted up and talked with several people, and from what they gave me, they gave me a straight legal story.

Q. What made you ask those fellows if they had been hired? Did you think they had? Did they look like they had?

A. No. I took that precaution when I was first

(Testimony of Frederick A. Kribs.)

in Roseburg, before I put a cent of money in.

Q. And you knew then that those fellows were around there—McKinley and Puter—paying their hotel bills, and paying their expenses there in Roseburg?

A. I didn't know anything about their paying expenses or anything of that kind. Everybody was a stranger to me except Puter and McKinley and Tarpley. I didn't know anyone in Oregon. **[1112—945]**

Q. Well, all this trouble you were having, you kept notifying Smith of it all along—discussing ways and means of getting the lands expedited to patent.

A. I don't know as I wrote him so very much about it.

Q. Well, you wrote about these Stratford affidavits, didn't you?

A. I cannot recall of writing or saying anything.

Q. Where is that correspondence between you and Smith? What became of that?

A. In the years 1900 and 1901, up to the time I moved out here, I had no regular office; I had no stenographer; I never have had a letter-press; mine are all long-hand letters. I never did have any copies of that stuff. Later on, when I had an office, I did have a stenographer, and I kept copies. About the time of the excitement and trouble here, four or five years ago, I looked over pretty near everything, and anything that might be interpreted not in my favor, I made a clean-up, and burned up.

Q. Cleaned it all up? A. You bet I did.

(Testimony of Frederick A. Kribs.)

Q. What became of the duplicate of it in Minnesota? Was that cleaned up, too?

A. Well, you will have to find out when you go back there.

Q. Well, don't you know?

A. I don't know much about it.

Q. I call your attention to a letter of the *26th* of February, 1900, also one of March 10, 1900, addressed to the Commissioner of the General Land Office, signed by Britton & Gray, and ask you if those are the letters you referred to as the Northern Pacific letters? **[1113—946]**

A. I think these are the letters: and I saw them about five years ago upstairs here. Mr. Burns had these letters and showed them to me. That is where I first knew the real protest was made at Washington to the Land Commissioner.

Q. Oh, well, you are talking now about something that you learned five years ago instead of eight or nine or ten years ago.

A. Those letters there, the first time that I knew the protest was actually made, and saw it in black and white. Pierce Mays was telling me, he says, "I presume there's protests by the company." And another party told me the same.

Q. Who was the other party?

A. C. E. Moulton. But I saw those letters for the first time then right here.

Mr. McCOURT.—I will ask that these letters be introduced to complete the entire record; that is all that has been left out of the record of the Land Office. It is not necessary to read them. You know

(Testimony of Frederick A. Kribs.)

what they are.

Mr. LIND.—No, I do not. I never saw them.

Mr. McCOURT.—They just simply complete the record of the Land Office. They can just be copied into the record.

Mr. LIND.—Let me ask Mr. McCourt, in connection with those letters, so as to save any cross-examination, you do not contend that the witness had any knowledge of those letters prior to the purchase of these claims?

Mr. McCOURT.—No. I am just offering them to perfect the record, and in connection with his statement **[1114—947]** that he thought that those letters were the trouble here in 1901.

The letters are marked "Government's Exhibits 197 and 198," and read as follows:

[Government's Exhibit No. 197.]

"NORTHERN PACIFIC RAILWAY COMPANY.

'P' Legal Department.

Glover Building, Washington, D. C.

February 26, 1900.

Britton & Gray

Washington Counsel

Alex B.

Hon. Binger Hermann,

Commissioner of the General Land Office.

Sir:

We are advised by agents of the Northern Pacific Railway Company that a great many filings now being made upon lands in the Roseburg, Oregon, District, are fraudulent, and are being engineered by S. A. D. Puter of Portland, Oregon, and H. G. Mc-

Kinley of Brownsville, Oregon.

We are further advised that, on January 19, 1900, ten applications were filed: January 20, nine applications; January 22, one application; January 23, eight applications; January 31, seven applications, and February 1, six applications, all covering lands in Township 14 S., Ranges 2 and 3 East. We respectfully suggest that an investigation of these entries by your office would probably demonstrate the fraudulent character of same, and result in their cancellation.

Very respectfully,

BRITTON & GRAY,

Attys. Northern Pacific Railway Company."

[1115—948]

[Government's Exhibit No. 198.]

"NORTHERN PACIFIC RAILWAY COMPANY.

Legal Department.

Glover Building, Washington, D. C.

March 10, 1900.

Britton & Gray,

Washington Counsel.

Alex B.

Hon. Binger Herman,

Commissioner of the General Land Office.

Sir:—

In its search for available lands, to satisfy its indemnity rights, the Northern Pacific Railway Company has recently made extensive examination of lands in the Roseburg and Oregon City, Oregon Land Districts. As a result, said company believes that it has discovered a large number of fraudulent

timber land entries, on which various parties are attempting to acquire title to valuable tracts of land by evading the law of the United States. The Company has, by selecting said land and filing of contest, attempted to bring to the attention of the office the fraudulent character of the entries aforesaid. But apparently the interest of said company under its selection has caused the office to be disinclined to take independent action from the Government standpoint. If your office, however, be inclined to exercise its independent right to investigation, we respectfully invite your attention to the following entries in the Roseburg Oregon District, which by proper investigation we believe will be shown to be fraudulent, and subject to cancellation.

The lands involved are located in Township 14 South, R. 2 and 3 E., and cover an area of 6,548.72 acres, being covered by forty-one timber land entries made as follows: **[1116—949]**

January 19, 1900	10
January 20, 1900	9
January 22, 1900	1
January 23, 1900	8
January 31, 1900	7
February 1, 1900,	6

According to the information of the company, all these filings were made under the supervision and management of one Stephen A. D. Puter of Portland, Oregon, who, with his wife, also made filing, and one Horace G. McKinley, whose address is Brownsville, Oregon, but who spends a great deal of his time at Albany, Salem and Foster.

(Testimony of Frederick A. Kribs.)

A number of the timber applicants are saloon keepers, and a number are men without apparent occupation, as we are advised, none of whom have personally examined the lands filed upon, and all of whom have probably executed relinquishment, assignment or mortgage to Puter or McKinley, whereby such title as they may acquire will inure to others than themselves.

We do not state the above facts as being so, but it is indicated that they are, and we believe that an examination of the entries through your instrumentality will result in preventing this possible wholesale fraud upon the Government. We therefore submit the above information for such use as you may desire to take looking towards the cancellation of the timber land filings aforesaid.

Very respectfully,
BRITTON & GRAY,
Att'ys Northern Pacific Ry. Co."

Q. You did not give Shupe any money to let any of those fellows have, did you, that were proving up?

A. My recollection is the first check of $7200 was drawn **[1117—950]** in his office made payable to Booth, Receiver, or to the Receiver of the Land Office, and I gave that to Mr. Shupe and Mr. Shupe took it into the office.

Q. And that is all the money you gave him that time? A. That is all I gave him.

Q. And you never paid Puter any money on these $600 mortgages?

A. I fixed the $600 mortgages at his request, that,

(Testimony of Frederick A. Kribs.)

in case any of these people did not give a deed, he wanted the mortgage to call for $600, so that I should protect him for his $200 fee and expenses that he had been to. I did that at his request.

Q. Well, you were expecting a deed then, when you got those mortgages fixed up?

A. Well, I was going to try to get the deed, if I could.

Q. And you never paid a cent on those mortgages, except the Land Office fees, until Puter came around with the wild geese, to you, and then you gave him all the money over and above what had been necessary to pay Land Office fees?

A. That is it exactly.

Q. And you did the same thing in the next bunch, on the May 16th lot? A. Yes.

Q. All the money you put up in the world was the money that paid the Land Office fees?

A. Yes, sir.

Q. And you never put up another cent until he came along with the deeds?

A. That is it exactly.

Q. And so far as those mortgages were concerned, they **[1118—951]** simply were an instrument to keep you fellows from losing out in case you did not get the deeds?

A. If they wanted to deed to somebody else, then we would have a security.

Q. Not if they wanted to deed, but if they should, by any chance deed to somebody else, you would have security?

(Testimony of Frederick A. Kribs.)

A. If they sold to anybody else, then we would be protected for the money paid into the Land Office.

Q. Who is Robert F. Greeson? Do you know him—have anything to do with him?

A. I have never met him. He is some party living in the east, but I do not know him.

Q. Now, in your statements to Smith, you included these amounts of money that you had paid Stratford and Loomis, and all these fellows, in connection with these lands?

A. I cannot recall doing so.

Q. Did you include in your statement the $10. you had paid Luella Beeman?

A. I don't recall any such sum as that, putting them in a statement.

Q. The $5.00 you had given Basil Wagner?

A. I don't recall putting anything like that in my statement.

Q. The $50 you gave John L. Green?

A. I don't recollect that.

Q. The money you paid Saltmarsh at Albany?

A. I do not remember of paying him anything there.

Q. You were there at the time his affidavit was taken?

A. I may be, but I don't recall the man.

Q. You were there when J. Phillips' affidavit was taken? A. Whereabouts?

Q. Albany? **[1119—952]**

A. I think Phillips was taken at Salem. I remember him. I remember Mr. Phillips. I don't

(Testimony of Frederick A. Kribs.)

remember the other man.

Q. How did Stratfort know that you had any interest in those lands at all? How did he find that out? A. What is the question?

Q. How did Stratford know that you had any interest in those lands?

A. He lived at Roseburg, I lived there, and when there was some trouble about it, somebody probably informed me and he either hunted me up, or I hunted him up, with a view to taking affidavits—something like that. I don't recall how we met.

Q. You made affidavits with the rest of the boys here in 1905, before Burns? I say, you did make some affidavits there at that time?

A. I don't recall.

Q. Oh, you don't recall that you did make some affidavits?

A. I made affidavits, but I don't know what you have reference to.

Q. Well, I ask you if that is your signature there to the instrument which I now hold in my hand?

A. That seems to be it.

Q. Yes. I notice there in the first part of that, you say that Loomis talked to you quite at length about the Puter claims. Was that these 33 claims?

A. I think he had reference to them.

Q. Yes. Now, just read that paragraph that you are reading on right down to the last of it there, and notice the last line, "Loomis understood me all right," and tell us what you meant by that.

A. The only way I could explain that, Stratford

(Testimony of Frederick A. Kribs.)

had **[1120—953]** charge of these cases.

Q. Loomis, you mean?

A. Well, there is a mistake in these 33 claims, if that is what you have reference to, because Stratford is really the man that had charge. And if Mr. Loomis would go out of his—

Q. Yes, but just look back at that again, and you will find that was just at the time the proofs were made, and there was some cross-examination conducted there by Mr. Loomis. It was before Stratford got on the ground at all.

A. Now, what explanation do you want of this?

Q. That part there, where it said: "Loomis understood me all right."

A. If he would go out of his way to do some work for me or anything like that, why, he had reason to believe that he would get something for doing that work. Probably that was what I had reference to.

Q. Well, he was not working for you, was he?

A. No, but he might go out and accomplish or do something for me, that I could not do myself, on account of the acquaintance that he had.

Q. In connection with the Government lands that you expected to acquire?

A. No. That had more reference, as I take it, to these two Jacobs affidavits.

Q. Oh, my gracious, Mr. Kribs, that was April, 1900, you are talking about there, and you did not get any Jacobs affidavits for a year and a half afterwards.

A. I spoke about Jacobs down here.

(Testimony of Frederick A. Kribs.)

Q. Yes, but read that first paragraph, when you give him $100 or $175, and you state that he understood you, **[1121—954]** I want to know what you meant by that.

A. Well, the only way that I could explain it is, that if he would go out and do anything, or any favor for me, why he would have reason probably to expect that he would get something, because he got these sums mentioned here. But I never asked him to go out and try to do any illegal act to get Government land for me.

Q. No, of course, you didn't. What you expected him to do was to give you the best of it whenever occasion arose, in the performance of his official duty; and that is what you paid Stratford for, wasn't it, so that when he was performing his public duty in connection with the matters with which you were interested, that you would stand a chance of getting a favorable judgment.

A. Well, I would go to work and use him decently, and try to get decent treatment in return. I never asked him to go out and do an illegal act yet.

Q. No, no. You were too smart for that.

Mr. McCOURT.—Now, I think that is all I want to ask the witness on 3320.

Redirect Examination.

(Questions by Mr. UELAND.)

Mr. Kribs, when did you employ Mays with reference to the time when the deeds were obtained for the lands covered by suit No. 3320?

A. I don't understand the question.

(Testimony of Frederick A. Kribs.)

Q. (Read.) That is to say, did you employ Mays before the final proof or after final proofs?

A. He was employed some time after final proof was made.

Q. Some time after final proof.

Witness excused. **[1122—955]**

Affidavit of Douglas Atkinson in U. S. Exhibit 2.

In the Matter of the Alleged Fraudulent Entry of DOUGLAS ATKINSON, No. 8182, for the SW. ¼ Sec. 24, Tp. 14 S. R. 3 E.

DOUGLAS ATKINSON, being first duly sworn, according to law, deposes and says:

Ques. State your name, age, occupation, and place of residence.

Ans. Douglas Atkinson; age, 43 years; occupation, blacksmith; residence, Wilbur, Douglas County, Oregon.

Ques. Are you the same person who made timber entry No. 8182 for the land above described?

Ans. I am.

Ques. At whose suggestion did you make this entry? Ans. Horace G. McKinley's.

Ques. What did he say to you in regard to the matter?

Ans. He said he thought it would be a good investment to enter the land.

Ques. Did he offer at that time to buy the land of you after it was entered, or to furnish you a buyer for the land after it was entered?

A. No.

Ques. State what was said, if anything, by Mc-

Kinley at that time or at any other time as to what disposition, if any, you could or should make of the land after you had obtained title to the same.

Ans. Nothing whatever.

Ques. Who, if anyone, went with you to look at the land before you made the application at the land office to enter it? Ans. Dan Tarpley.

Ques. How did he happen to go with you to look at the land?

Ans. McKinley sent him. **[1123]**

Ques. What interest, if any, did McKinley have in the transaction?

Ans. I had employed McKinley to locate me on the land.

Ques. How much were you to pay him for locating you? Ans. $150.

Ques. Who, if any one besides Tarpley went with you at the time you examined this land?

Ans. Several men who were looking for land accompanied us.

Ques. Do you know Stephen A. D. Puter, and was he with you at the time? Ans. Yes.

Ques. Was Ira A. Pilkington with you at that time? Ans. Yes.

Ques. State the names of any other parties whom you remember were with you at that time.

Ans. Neal Dozier, John J. Jaggy, Zebulon Smith, and others, but I am not acquainted with them.

Ques. Where did you leave the railroad in going to the land? Ans. At Halsey.

Ques. How did you travel from Halsey to the land?

Ans. In a private conveyance a part of the way and the rest of the way afoot.

Ques. How long did it take you to go from Halsey to the land and back to Halsey?

Ans. About three days.

Ques. Who paid your railroad fare from the point you started from to Halsey and return?

Ans. I paid it myself.

Ques. Did you make an examination of the particular land you entered or did you simply look at the land as a body?

Ans. I made an examination of it.

Ques. How did you identify the particular land you entered?

Ans. I examined the corners. **[1124]**

Ques. Did you borrow the money or any part thereof with which you paid for the land at the time you made final proof?

Ans. Yes, I borrowed $600 from Mr. Kribs.

Ques. How was the loan secured, if at all?

Ans. By a mortgage on this land.

Ques. How much money did you actually receive from Mr. Kribs? Ans. $600.

Ques. Did you have the transaction with Mr. Kribs personally, or did some one act as his agent in making the loan? Ans. With Mr. Kribs.

Ques. Was the money paid in cash or by check on the bank? Ans. In cash.

Ques. At what particular place was the money paid to you?

Ans. At John H. Shupe's office in Roseburg, Oregon.

Ques. How did you come to borrow the money from Mr. Kribs?

Ans. I heard he had money to loan.

Ques. Who told you he had money to loan?

Ans. I heard it on the street.

Ques. Was there anything said at the time you borrowed the money in regard to Mr. Kribs or anyone else purchasing the land or the timber thereon after you had obtained title to the land? Ans. No.

Ques. What disposition if any have you made of the land?

Ans. I sold it to John A. Willd.

Ques. How much did you receive for it?

Ans. $800.

Ques. Who, if any one, paid the mortgage of $600 to Mr. Kribs? Ans. I paid it.

Ques. Before or after you made the sale of the land to Willd? Ans. Afterwards.

Ques. Did you ever see John A. Willd yourself?

Ans. No. **[1125]**

Ques. Who, if any one, acted as the agent of Mr. Willd in purchasing this land of you?

Ans. John H. Shupe.

Ques. How long after you had made your final proof was it till you transferred the land to Willd?

Ans. About two weeks.

Ques. How long was it after you made your final proof before Mr. Shupe spoke to you in regard to your making the sale to Willd.

Ans. About two weeks.

Ques. Why did you sell the land so soon after you had obtained title to it?

Ans. I needed the money for other purposes.

Ques. Who, if any one other than yourself, furnished the money to pay the land office fees and other fees connected with the transaction?

Ans. I furnished it myself.

Ques. State whether or not you ever made any contract or agreement either expressed or implied before you made your final proof to sell or convey this land or any part thereof or of any of the timber thereon and if so, to whom?

Ans. None whatever.

Ques. State anything further that may occur to you as having a proper connection with this case.

Ans. I know of nothing further.

P. D. ADKINSON.

Subscribed and sworn to before me this 9 day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [1126]

Affidavit of Charles Barr in U. S. Exhibit 4.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of CHARLES BARR, No. 8172, for the SW. ¼ Sec. 35, Tp. 14 S. R. 3 E.

CHARLES BARR, being first sworn, according to law, deposes and says:

Ques. State your name, age, occupation and residence.

Ans. Charles Barr; age, 50; rancher; Salem, Marion Co., Oregon.

Ques. Are you the same person who made timber entry No. 8172 for the above described land?

Ans. I am.

Ques. Who, if any one, suggested to you the advisibility of taking up this land?

Ans. No one.

Ques. Who, if any one, located you on the land?

Ans. Mr. Horace G. McKinley.

Ques. How much did you pay Mr. McKinley for locating you? Ans. $100.

Ques. How did you come to get him to locate you?

Ans. He was there and I was not very well acquainted with the land, so I had him locate me.

Ques. Did he at that time or at any time before you obtained title to the land, agree to furnish you a buyer for it? Ans. No, he did not.

Ques. State what if anything, was said by Mr. McKinley at that time or at any other time as to what disposition you could or should make of the land. Ans. None at all. **[1127]**

Ques. Did you make a personal examination of the land before you applied at the land office to be allowed to enter it? Ans. I did.

Ques. Who, if any one, went with you at the time you examined the land?

Ans. Mr. Philips and I were there.

Ques. For what did you pay Mr. McKinley $100?

Ans. For showing me the corners.

Ques. Did you examine the particular land which you entered? Ans. I did.

Ques. Describe the land.

Ans. It was mountain land and covered with timber, and unfit for cultivation.

Ques. Did you borrow the money or any part thereof with which you paid the Government for the land?

Ans. I borrowed $600 of Frederick A. Kribs, which was secured by a mortgage on this land.

Ques. Did you have the transaction with Mr. Kribs personally or did some one act as his agent in making the loan?

Ans. With Mr. Kribs himself.

Ques. Was the money paid you in cash or by check on the bank? Ans. In cash.

Ques. Where was the money paid you?

Ans. Here in Salem.

Ques. Was there anything said at the time you borrowed the money in regard to your making a sale of the land to any one after you had obtained title to it? Ans. No, sir, there was not.

Ques. What disposition, if any, have you made of the land?

Ans. I sold it to John A. Willd.

Ques. How much did you receive for it? [1128]

Ans. $950.

Ques. Did you ever see Mr. Willd himself?

Ans. No, I did not.

Ques. Who, if any one, acted as the agent of Mr. Willd in purchasing this land from you?

Ans. Dan Tarpley.

Ques. Did he pay you the money for the land?

Ans. Yes.

Ques. Was the amount paid in cash or by check on the bank? Ans. In cash.

Ques. Where was the money paid you?

Ans. Here in Salem.

Ques. Have you seen this land since you made your final proof, and if so, how often?

Ans. I have not seen it at all.

Ques. Did you at the time you made this entry own any other real estate in the neighborhood of this land? Ans. No.

Ques. How long was it after you made your proof on the land, paid the Government for it, was it until you sold it to Willd?

Ans. About a month.

Ques. How did you happen to sell the land?

Ans. I needed the money to buy another place, so I had Mr. Tarpley to make the deal for me.

Ques. State whether or not you made any contract or agreement, either express or implied, before you made your final proof to sell or convey this land or any of the timber thereon to any one.

Ans. I did not.

CHARLES BARR.

Subscribed and sworn to before me this 13th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1129]**

Affidavit of H. C. Barr in U. S. Exhibit 6.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of HARRY C. BARR, No. 8177, for the SE. ¼ Sec. 24, Tp. 14 R. 2.

HARRY C. BARR, being first duly sworn, ac-

cording to law, deposes and says:

Ques. State your name, age, occupation and residence.

Ans. Harry C. Barr: age, 28; occupation, civil engineer; residence, Albany, Linn County, Oregon.

Ques. Are you the same person who made timber entry No. 8177, for the land above described?

Ans. I am.

Ques. At whose suggestion did you make this entry? Ans. At my own.

Ques. Do you know Horace G. McKinley, Stephen A. D. Puter, and Frederick A. Kribs?

Ans. I do.

Ques. Did they or either of them have anything to do with inducing you to make this entry, and if so, what?

Ans. McKinley and Tarpley located me on the land.

Ques. Did you make a personal examination of this land before you applied at the land office to be allowed to enter it? Ans. I did.

Ques. Did either of the parties McKinley or Tarpley at the time offer to buy the land or to furnish you a buyer for it after it was entered?

Ans. No.

Ques. Who, if any one went with you at the time you examined the land prior to making the application? **[1130]** Ans. I went alone.

Ques. How did you go from your home in Albany to the land?

Ans. I went in a buggy part of the way and walked the rest of the way.

Ques. Who, if any one did you pay for locating

you on the land? Ans. Dan Tarpley $100.

Ques. How did you identify the land which you examined as the land which you afterwards located?

Ans. I am a surveyor, and I saw the witness trees.

Ques. Did you borrow the money or any part thereof with which you made your final proof?

Ans. Yes, sir, I borrowed $400 of S. A. D. Puter.

Ques. How was it secured, if at all?

Ans. By a mortgage on the land.

Ques. How did you come to borrow the money of Mr. Puter?

Ans. I borrowed it to pay for the land.

Ques. Was there anything said at the time you borrowed the money by Mr. Puter or any other person in regard to your selling the land or the timber thereon after you had obtained title to the same?

Ans. No, sir.

Ques. What disposition if any, have you made of the land?

Ans. I sold it to John A. Willd.

Ques. How much did you receive for it?

Ans. About $650.00.

Ques. Who, if any one acted as the agent of Mr. Willd in purchasing the land of you?

Ans. D. H. Tarpley.

Ques. Who paid you the money for the land?

Ans. D. H. Tarpley.

Ques. Where did the transaction take place?

Ans. In Albany, Oregon. **[1131]**

Ques. Did you pay the mortgage of $400 which you gave on the land? Ans. Yes, sir.

Ques. Where was this mortgage drawn up?

Ans. In Roseburg, Oregon.

Ques. How long after you entered the land was it before you sold the same?

Ans. I could not state positively.

Ques. How did it happen that you sold the land so soon after you obtained title to it?

Ans. I could use the money to a better purpose.

H. C. BARR.

Subscribed and sworn to before me this 11th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [1132]

Affidavit of Luella Beeman in U. S. Exhibit 8.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of LUELLA BEMAN, No. 8240 for Lot 4, S. ½ SE. ¼ Sec. 31, SW. ¼ SW. ¼ Sec. 32, Tp. 14 S. R. 4 E.

LUELLA BEMAN, being first duly sworn, according to law, deposes and says:

Ques. State your name and residence.

Ans. Luella Beeman; Albany, Linn County, Oregon.

Ques. Are you the same person who made timber entry No. 8240 for the land above described?

Ans. Yes, sir.

Ques. Who first called your attention to the advisibility of making this entry?

Ans. My husband, Edson Beeman. He was en-

gaged in locating parties on timber land in that section.

Ques. Did you make a personal visit to and inspection of the land prior to filing? Ans. Yes.

Ques. Did you make a special examination of this land shortly before filing? Ans. Yes, sir.

Ques. Who, if any one, accompanied you at the time you visited the land?

Ans. My husband, Edson W. Beman.

Ques. With which ones of the following named persons, if any, are you acquainted, namely, Horace G. McKinley, Frederick A. Kribs, Stephen A. D. Puter and John A. Willd? **[1133]**

Ans. All four of them.

Ques. Did you have any conversation with either of these persons prior to filing on the land, relative to the same? Ans. No, I did not.

Ques. How did you identify the land that you examined as being the identical land on which you afterwards filed?

Ans. My husband went with me and showed me the corners.

Ques. Have you seen this particular land since you proved up on it, and if so, how often?

Ans. Only once; that was last fall.

Ques. Did you borrow the money or any part thereof with which you paid the Government for the land?

Ans. Yes, I borrowed $600 of Mr. Frederick A. Kribs.

Ques. How was the loan secured, if at all?

Ans. By a mortgage on the claim.

Ques. Did you have the transaction with Mr.

Kribs personally or did some one act as his agent in making the transaction?

Ans. With Mr. Dan Tarpley, of Salem.

Ques. Was the money paid to you in cash or by a check on the bank?

Ans. By cash and a check on the First National Bank at Roseburg.

Ques. Was there anything said at the time you borrowed the money by Mr. Tarpley or any one else in regard to a sale of the land or any of the timber thereon after you had obtained title thereto?

Ans. No, not a word.

Ques. What disposition, if any have you made of the land?

Ans. I sold it to John A. Willd, of Hoffman, Minnesota.

Ques. How much did you receive for the land?

Ans. $850.

Ques. Who, if any one, acted as the agent of Mr. Willd in making the sale?

Ans. Mr. Tarpley did the business. **[1134]**

Ques. Was the money for the land paid to you in cash or by a check on the bank? Ans. In cash.

Ques. Have you paid the mortgage of $600 which you gave on the land? Ans. Yes, sir.

Ques. To whom did you pay it?

Ans. I paid it to Mr. Tarpley, for Mr. Kribs.

Ques. About how long was it after you made your final proof on the land before you transferred it to Mr. Willd?

Ans. About two or three months.

Ques. What caused you to make a sale of the land within that time after entering it?

Ans. Because I had an opportunity to sell it at what I thought was a reasonable price.

Ques. State whether or not you made any contract or agreement either expressed or implied, prior to making your final proof to sell this land or any part thereof, or any of the timber thereon, and if so, to whom? Ans. I did not make any.

Ques. You may state anything further that may occur to you as having a proper connection with or bearing on this case.

Ans. I know of nothing further.

MRS. LUELLA BEEMAN.

Subscribed and sworn to before me this 12th day of July, 1901.

E. D. STRATFORD.
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1135]**

Affidavit of H. W. Blakely in U. S. Exhibit 10.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of HENRY W. BLAKELY, for the NW. ¼ of the SW. ¼ of Sec. 29, and Lot 3, the N. ½ of SE. ¼ of Sec. 30, Tp. 14 S. R. 4 E.

HENRY BLAKELY, being first duly sworn according to law, testifies as follows:

Q. State your name, age, occupation and place of residence.

A. Henry W. Blakely; 51 years; Brownsville; farmer.

Q. Are you the same person who made a timber entry of the land above described?

A. Yes, sir.

Q. How far do you live from this land?

A. I judge it is about between 25 and 30 miles, or perhaps a little further.

Q. How long have you resided in Linn Co., Or.?

A. I was born here. I have lived here all my life.

Q. Have you a family? A. Yes, sir.

Q. Who, if any one, located you, or showed you this land prior to you filing on it?

A. Dan Tarpley.

Q. How much if anything did you pay him for his services? A. $50.00.

Q. How did you happen to obtain the services of Mr. Tarpley for this purpose?

A. I spoke to him and Horace McKinley about locating me and they did so.

Q. How did you happen to take up this particular tract of land at the particular time that you did?

[1136]

A. I wanted a claim and that was about all that wasn't taken up. There were seven of us and we wanted to get our claims together.

Q. Who were the seven that you have reference to?

A. Myself, my son, Hugh Blakely, and Mr. Jas. B. Cooley, Frank Burford, Jacob Stillwell and John Harrison and Frank Harrison.

Q. Did all of those parties whom you mention live at or in the neighborhood of Brownsville?

A. They did.

Q. Did you make a personal examination of the land before filing on it? If so, state who went with

you at the time and how you identified the land which you examined as the land on which you afterwards filed.

A. I made an examination; the party of seven whom I have mentioned went together and Mr. Tarpley went with us and assisted us in running out the lines and locating the land.

Q. What real estate, if any, do you own in this county? A. I own 304 acres of land.

Q. From what source did you obtain the money with which you paid the Government for this land and the expense incident to the entry?

A. I mortgaged the land to Fred A. Kribs.

Q. What disposition if any have you made of the land or the timber thereon since you obtained the title thereto?

A. I sold the land to John A. Willd.

Q. How much did you get for it?

A. About $800.00.

Q. About how long was it after you made your proof that you sold the land to Mr. Wills, as near as you can remember?

A. It was nearly three weeks or more.

Q. What did you expect to do with the land or the timber thereon at the time you made the entry?

A. Well, I thought I wanted a timber claim.

Q. What caused you to sell the land at the time you did?

A. I mortgaged the land and thought I would have the money; I did not have it without borrowing it, and Mr. Mealey also advised me to sell it. [1137]

Q. Did you borrow the money directly from Mr. Kribs personally, or did some one act as his agent or

your agent in securing the loan?

A. I got it from Mr. Kribs.

Q. Did you make the sale to Mr. Willd personally or did some one act as his agent in purchasing the land and paying you for it and if so, who?

A. Mr. S. A. D. Pewter.

Q. What relation, if any, are you to Hugh Blakely? A. He is my son.

Q. Where is he living at the present?

A. In Butte, Montana.

Q. Are you acquainted with Frank M. Burford, who also made a timber entry about the same time that yourself and your son, Hugh Blakely made a timber entry? A. Yes, sir.

Q. Where is he now, if you know?

A. He is in Northport, Washington.

Q. Were they both residing here at the time they made their entries, if you know? A. Yes, sir.

Q. How soon after they completed their entry and sold their land did they leave this part of the country? A. Some months afterwards.

Q. How did you happen to ascertain that you could borrow the money from Mr. Kribs to pay for this land?

A. Horace McKinley said I could, if I wanted to. He said if we didn't have the money at that time we could borrow it of him.

Q. When, and where did you first meet Mr. Kribs, previous to borrowing the money of him to pay for the land?

A. I met Mr. Kribs at Halsey.

Q. Was he at Roseburg at the time that you made your proof? A. Yes, sir.

Q. Did you have any contract or agreement either expressed or implied [1138] with Mr. Kribs, Mr. Tarpley, Mr. McKinley or any other person in regard to the disposition which you should or could make of the land at any time prior to making the final proof? A. No, sir.

HENRY W. BLAKELY.

Subscribed and sworn to before me this 11th day of March, 1902.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [1139]

Affidavit of Peter Buffington in U. S. Exhibit 15.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of PETER BUFFINGTON, No. 8234, for the SE. ¼ Sec. 14, Tp. 14 S. R. 3 E.

PETER BUFFINGTON, being first duly sworn according to law, deposes and says:

My name is Peter Buffington; my age is 22, and my occupation is a railroad engineer, and my residence is Portland, Oregon. I am the same person who made timber entry No. 8234 for the land above described. I was shown the land by Horace G. McKinley, and I paid him for locating me on the land, $125. I never had any conversation with Mr. McKinley at the time I located the land or at any other time prior to the date of making my final proof relative to selling the land or any part thereof, or any of the timber thereon to Mr. McKinley or any other person. I identified the land which I examined as being the land which I afterwards entered by means of a township plat furnished by the U. S. Land Office and by finding the surveyor's posts at the section corners. The land is hill or mountain land and is quite rough. It is covered with a heavy growth of timber, principally fir. There is little if any agricultural land on the tract.

The land in question is about 35 miles from Albany. In visiting the land I went on the train from Albany to Lebanon where I took a hack and drove to what is known as the Mealey place. From there

we went afoot about 6 miles to the land.

I borrowed $600 of Mr. Frederick A. Kribs to pay for the land and the other expense connected with the entry, giving him my note **[1140]** for three months at ten per cent interest, secured by a mortgage in the land in question. Mr. Horace G. McKinley acted as the agent of Mr. Kribs in making me the loan. The money was paid to me in cash at Roseburg, Oregon, on the day that final proof was made on the land. I have since sold the land to John A. Willd for $850. I did not have the transaction with Mr. Willd personally, but with Mr. Horace G. McKinley, who was acting as Mr. Willd's agent in buying the land. I have not seen the land since the time I examined it with a view to entering it as above stated. I never owned any other land than that above described in that neighborhood. I owned the land about three months before I sold it. I sold the land because I was afraid that I could not pay off the mortgage and I needed the money. I never made any contract or agreement with any one, either expressed or implied before I made my final proof to sell this land or any part thereof or any of the timber thereon to any one.

PETER BUFFINGTON.

Subscribed and sworn to before me this 18th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1141]**

Affidavit of Chas. Burley in U. S. Exhibit 19.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of CHARLES BURLEY, No. 8173, for the SE. ¼ Sec. 35, Tp. 14 S. R. 3 E.

CHARLES BURLEY, being first duly sworn, according to law, deposes and says:

My name is Charles Burley; age 32; occupation is a laborer; and my residence is Portland, Oregon. I am the same person who made timber entry No. 8173, for the land above described.

I made the location at the suggestion of Daniel Tarpley, who was locating parties in that locality, for which I paid him $100. I made a personal examination of the land before entering it. Mr. Tarpley went with me to show me the land, and two or three other persons went with us who were looking for locations. I went by railroad from Salem, where I was living at that time, to Lebanon; from there we took a hack and team, and drove to within five or six miles of the land; we then left the hack, and walked the remainder of the distance. I identified the land which I examined as being the land which I afterwards entered, by being informed by Mr. Tarpley that such was the fact. He claimed to be acquainted with the numbers. The land is hill or mountain land and is quite heavily timbered, there being but little if any of it suitable for agricultural purposes. I borrowed the money to pay the Government for the land and the other expenses of

the entry. I borrowed $600 of Mr. Frederick A. Kribs, for three months at 10 per cent interest, secured by a mortgage on the land entered.

I had the transaction with Mr. Kribs personally, the amount of the loan being paid to me in cash by him at Roseburg, Oregon, **[1142]** the day the land was entered. I sold the land about three weeks after I entered it, to Mr. John A. Willd, for $800 cash. Stephen A. D. Puter and Horace G. McKinley acted as the agents of Mr. Willd, in making the deal. The money was paid to me by Mr. Puter. I paid Mr. Kribs the $600 I owed him out of the proceeds of the sale. I sold the land at the time I did for the reason that *other* in the neighborhood were selling, and I thought it was better to sell it than to hold it. I have not seen the land since the time I examined it with Mr. Tarpley prior to making application to enter it. I never owned any other land in that neighborhood. I never made any contract either expressed or implied, prior to having entered the land, to sell or dispose of the same or the timber thereon, to any one.

CHARLES BURLEY.

Subscribed and sworn to before me this 17th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1143]**

Affidavit of J. B. Cooley in U. S. Exhibit 21.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JAS. B. COOLEY of Lot 3, the N. ½ of SE. ¼ of Sec. 31, Tp. 14 S. R. 4 E.

JAS. B. COOLEY, being first duly sworn, according to law, testified as follows:

Q. State your name, age, occupation and place of residence.

A. Jas. B. Cooley; 27; Brownsville, Linn Co., Or.; clerk.

Q. How long have you lived in this county?

A. 27 years.

Q. Have you a family?

A. Yes, sir, I have a wife.

Q. About how far do you live from this land?

A. About 30 miles perhaps a little further.

Q. Who, if any one located you or showed you this land?

A. Dan Tarpley located me. I had been on the land before.

Q. How much if anything did you pay him for his services? A. I paid him $50.00.

Q. Did you make a personal examination of the land before you filed on it? A. Yes, sir.

Q. How often had you been on the land previous to making the filing?

A. I have been in the neighborhood several times but do not know that I was ever on this particular tract but the one time when I examined it with Mr. Tarpley.

Q. How did you identify the land which you examined as being the land on which you afterwards filed?

A. I had to take Mr. Tarpley's word for it. I paid him for locating me and I supposed he was locating me on the piece of timber that he [1144] said he was.

Q. What did you expect or intend to do with the land or the timber thereon at the time you made the entry?

A. I expected to keep the land until I could sell the timber off of it. They were talking about forming a company here for the purpose of handling the timber.

Q. From what source did you obtain the money with which you paid for entering the land and the other expenses incident to the entry?

A. I mortgaged the land to Mr. Kribs.

Q. How did you happen to go to Mr. Kribs to obtain this money?

A. I first went to see Mr. McKinley. I didn't know Mr. Kribs at the time. Mr. McKinley had an advertisement in the Brownsville "Times" here at the time that he had money to loan and he told me that he didn't have the money, it was Mr. Kribs.

Q. What disposition did you make of the land after you had made your final proof?

A. I sold it.

Q. To whom did you sell it?

A. Jno. A. Willd.

Q. Did you have the transaction with Mr. Willd personally, or did some one act as his agent in purchasing the land?

A. Stephen A. D. Pewter acted as the agent of Mr. Wiild.

Q. About how long was it as near as you can remember after you made your final proof on the land that you transferred it to Mr. Willd?

A. Some time inside of a month.

Q. What caused you to sell the land so soon after you had secured the title thereto?

A. This company were talking of banding together for protection. By the company, I mean the party of seven who went in together to take this land, and we also had the promise of assistance in a financial way of some moneyed men, but dissatisfaction arose among the men, and **[1145]** one of the men, who had promised to assist us in holding the land and the handling the timber died, after which some of the parties concluded to sell and not wishing to be left alone, with my land on my hands, I concluded to sell mine also.

Q. Was there any understanding or agreement between yourself and Mr. Kribs at the time you borrowed this money in regard to the disposition which you should or could make of the land after you had obtained the title thereto? A. No, sir.

Q. You may state anything further which you may desire to state in regard to this transaction.

No, sir, nothing further.

JAMES B. COOLEY.

Subscribed and sworn to before me this 12th day of March, 1902.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1146]**

Affidavit of John L. Green in U. S. Exhibit 26.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JOHN L. GREEN, No. 8170, for the NW. ¼ Sec. 35, Tp. 14 N. R. 3 E.

JOHN L. GREEN, being first duly sworn according to law, deposes and says:

My name is John L. Green; I am 30 years of age; reside at Oregon City, Oregon, and my occupation is common labor.

I am the same person who made Timber entry No. 8170, for the above described land. The question of locating the land was suggested to me by Mr. Daniel Tarpley, who was locating parties in this locality. I paid the said Daniel Tarpley $100 for locating me on the land. I was shown the land by Tarpley. He showed me what purported to be the corners of the land that I entered.

There was a number of parties went along at the time I examined the land, but I do not remember who they were. In going to examine the land I went from Salem where I was living then to Lebanon on the train, and took a hack from there to the Mealy place, where I left the hack and went afoot to the land.

The land is hill or mountain land and is covered with timber but little if any of the land is suitable for farming purposes. I never visited the land but once, and that was the time I made the examination above referred to. I never owned any real estate in the neighborhood of the land. I borrowed $600

of Mr. Frederick A. Kribs to pay the Government for the land and the other necessary expenses connected therewith, for 90 days at ten per cent interest and secured the same by a mortgage on the land. The money was given to me in cash by Mr. Kribs personally in Roseburg, Oregon, **[1147]** at the time I made final proof. I have since paid Mr. Kribs the amount. I have sold the land to Mr. John A. Willd for $850. Out of that sum I paid the mortgage of $600 to Mr. Kribs.

Horace G. McKinley acted as the agent of Mr. Willd in purchasing the land. The money was paid to me at Salem, Or. I owned the land about 6 weeks or two months. I had no other way of paying the mortgage on the land except by selling it.

I never made any contract or agreement either expressed or implied, before I entered the land to dispose of said land or any part thereof or any of the timber thereon, to any one.

JOHN L. GREEN.

Subscribed and sworn to before me this 16th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1148]**

Affidavit of John Harrison in U. S. Exhibit 28.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JOHN HARRISON for NW. ¼ of NW. ¼ of Sec. 29, Lot 1, and N. ½ of NW. ¼ of Sec. 30, Tp. 14 S. R. 4 E.

Q. State your name, age, occupation and place of residence.

A. John Harrison; 48 yrs.; Brownsville, Linn Co., Or.; laborer.

Q. Are you the same person who made a timber entry on the land described above?

A. Yes, sir.

Q. How long have you lived in Linn Co., Oregon?

A. All my life.

Q. About how far do you reside from this land?

A. About 32 or 33 miles.

Q. Have you a family? A. Yes, sir.

Q. Did you make a personal examination of this land before you filed on it? A. Yes, sir.

Q. State the nature and extent of such examination.

A. I am familiar with the land, I have worked in there.

Q. Who, if any one, located you or showed you this land? A. Mr. Dan Tarpley.

Q. How much if anything did you pay him for his services? A. About $25.00.

Q. Are you a practical woodman?

A. Yes, sir, I am.

Q. About how much timber board measure would you estimate that there is on this land per acre?

A. About 35,000. **[1149]**

Q. You may describe the land as nearly as you can as to whether it is rough, smooth or so on.

A. It's hilly with deep canyons, rough; no agricultural land.

Q. What induced you to take up a timber claim at the time you did?

A. There were others taking up land at the same time, and I thought I would.

Q. What did you expect to do with the land or the timber thereon at the time you made the entry?

A. I expected sometime to log it off.

Q. What disposition have you made of the land since you obtained your final receipt therefor?

A. I sold it.

Q. To whom? A. To John A. Willd.

Q. How much did you receive for it?

A. Near $800.00.

Q. About how long as nearly as you can remember was it after you made your final proof that you sold the land? A. About 3 weeks.

Q. From what source did you obtain the money with which you paid the Government for this land?

A. I got the money from Mr. Kribs.

Q. How did you happen to go to Mr. Kribs to borrow the money for this purpose?

A. I was told that he had money to loan.

Q. Why did you sell the land so soon after you had obtained the title to it?

A. There were others selling and I thought that a small tract of land up there would be of little use to me.

Q. Do you own any real estate in Linn Co., Oregon?

A. I am interested in some town property.

Q. Have you been on this land since the date you made final proof?

A. I have been across it. **[1150]**

Q. Did you receive any other offers for the land than that made by Mr. Willd?

A. I think there was but not to justify me.

Q. Did you have this transaction of the sale of the land with Mr. Willd personally or did some one act as his agent in purchasing the land for you?

A. Mr. Pewter acted as his agent.

Q. Stephen A. D. Pewter you mean?

A. Yes, sir.

Q. Did you prior to the date of your final proof have any contract or agreement with any one as to the disposition which you could or should make of the land after you should have obtained the title thereto? A. No, sir.

JOHN HARRISON.

Subscribed and sworn to before me this 11th day of March, 1902.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [1151]

Affidavit of John J. Jaggy in U. S. Exhibit 32.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JOHN J. JAGGY, No. 8179 for SE. ¼ Sec. 24, Tp. 14 S. R. 3 E.

JOHN J. JAGGY, being first duly sworn, according to law, testified as follows in relation to said entry.

Ques. State your name, age, and place of residence.

Ans. John J. Jaggy; age, 34 years; residence, Roseburg, Douglas County, Oregon.

Ques. Are you the same person who made Timber entry No. 8179 for the land above described?

Ans. Yes, sir.

Ques. At whose suggestion did you make this entry? Ans. Horace G. McKinley.

Ques. What did he say in regard to the matter?

Ans. He offered to locate me for a certain sum of money.

Ques. What, if anything, was said by McKinley at that time or at any other time in regard to what disposition if any you could or should make of the land after you had entered it? Ans. None.

Ques. Who, if any one, went with you to look at the land before you made the application at the land office to be allowed to enter the land?

Ans. Daniel H. Tarpley.

Ques. What connection did he have with the transaction, if any?

Ans. McKinley sent him to show me the corners.

Ques. What means did you take to identify the land as being the land which you afterwards entered?

Ans. I found the surveyor's corners and went all over the land. **[1152]**

Ques. Did you borrow the money or any part thereof with which you paid for the land at the time you made your final proof?

Ans. Yes, I borrowed $600.00 of Frederick A. Kribs.

Ques. What was the conditions of the loan?

Ans. The loan was for 90 days at 10 per cent interest, secured by a mortgage on the land entered.

Ques. How much money did you actually receive

from Mr. Kribs? Ans. $600.

Ques. How did you come to borrow this money of Mr. Kribs?

Ans. Mr. Kribs had money to loan, as I was told by some one and I wanted the money.

Ques. Was there anything said at the time you borrowed the money in regard to Mr. Kribs or any one else purchasing the land or the timber thereon after you had obtained title to the land?

Ans. No.

Ques. What disposition if any have you made of the land?

Ans. I sold it to John A. Willd.

Ques. How much did you receive for it?

Ans. About $800.

Ques. Out of that did you, or were you to pay off the mortgage of $600 to Kribs?

Ans. Yes, I paid the mortgage.

Ques. *What,* if any one, acted as the agent for Mr. Willd in this transaction?

Ans. Mr. John H. Shupe.

Ques. How much did you pay Mr. McKinley for showing you this land? Ans. $150.

Ques. Who, if any one other than yourself, furnished the money to pay the land office fees, publication fees, and other expenses connected with this transaction? Ans. No one. **[1153]**

Ques. When did Mr. Shupe first mention to you the subject of a sale of the land to Mr. Willd?

Ans. Shortly after I had made my proof.

Ques. State whether or not you ever made any contract or agreement either expressed or implied before you made your final proof to sell or convey

this land or any part thereof or any of the timber thereon to any person, and if so, whom?

Ans. I never did.

Ques. How did you come to sell the land so soon after you had made your final proof?

Ans. To make better investments with the money I received for it.

Ques. Did you at any time, either before or after you had made your final proof, and prior to having transferred the land to Willd, have any conversation with Mr. Horace McKinley, Mr. Stephen A. D. Puter, or Mr. Frederick A. Kribs relative to a sale of this land or any part thereof or any of the timber thereon to any one? If, so, state with whom the conversation was had and the substance of the same?

Ans. I did not.

Ques. State anything that may occur to you further as having a proper connection with this case.

Ans. I know of nothing further.

JAHN J. JAGGY.

Subscribed and sworn to before me this 8th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1154]**

Affidavit of Benj. F. Kirk in U. S. Exhibit 34.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of Benjamin F. Kirk, No. 8232, for the NE. ¼ Sec. 14, Tp. 14 S. R. 3 E.

BENJAMIN F. KIRK, being first duly sworn,

according to law, deposes and says:

My name is Banjamin F. Kirk; age, 40 years; occupation, barber; residence, Albany, Oregon.

I am the same person who made timber entry No. 8232 for the above-described land. I had known the land personally for a number of years prior to making the entry. I had been thinking for some time that I would take up a piece of timber land and took up the land at this particular time because other persons of my acquaintance were taking up land there and I knew it to be good timber land. I went out to the land shortly prior to making the application to enter it, and selected the particular tract which I desired. Mr. Horace G. McKinley and Mr. Dan Tarpley and a number of other entrymen went along at the time. We went from Albany to Lebanon on the train, and from there to the Mealey place with a hack and team. From there we walked to the land, some six or seven miles. I paid Horace G. McKinley $100 as a location fee. I borrowed $600 of Mr. Frederick A. Kribs with which to pay the Government for the land and the other necessary expense of the entry. The loan was for 90 days at ten per cent interest and was secured by a mortgage on the land entered. The money was paid to me in cash by Mr. Kribs at Roseburg, Oregon, at the time the entry was made. I have since paid Mr. Kribs the amount of the loan. I have sold the land to Mr. John [1155] A. Willd for $800. Mr. Horace G. McKinley acted as the agent of Mr. Willd in purchasing the land. I owned the land five or six weeks before selling it. I sold the land because I did not feel able to hold it, and I thought it would

be a good plan to sell it as the other boys who had entered land in the neighborhood were selling. I never made any agreement either expressed or implied, with any one, prior to having obtained title to the land to sell or convey the same or any of the timber thereon to anyone.

BANJAMIN F. KIRK.

Subscribed and sworn to before me this 11 day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [1156]

Affidavit of Jay S. Phillips in U. S. Exhibit 38.

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JAY S. PHILLIPS, No. 8180, for the NE. ¼ Sec. 34, Tp. 14 S. R. 3 E.

JAY S. PHILLIPS, being first duly sworn, according to law, deposes and says:

My name is Jay S. Phillips; I am 38 years of age; my occupation is a laborer, and my residence is Salem, Oregon. I am the same person who made timber entry No. 8180, for the above-described land. I was wanting to make an entry of timber land, and I was informed that Mr. Daniel Tarpley was making locations and I contracted with him to locate me and paid him $75.00 for the same. I made a personal examination of the land prior to making the application to enter it. Mr. Tarpley went with me to examine the land. I went from Salem to Lebanon by train, in a hack from there to Mealey's, and

from there to the land we went afoot.

Mr. Tarpley showed me what purported to be the corners of the land which I was to enter, and I followed the line around the land sufficiently to ascertain the nature and quality of the land and timber. The land is hill or mountain land and is quite heavily timbered. There is but little of the land suitable for agricultural purposes. I never visited the land but the one time. I never owned any real estate in the neighborhood of this land. I borrowed $600 of Mr. Frederick A. Kribs to pay the Government for the land and the other expenses incident to the entry and gave him a mortgage for 90 days at ten per cent interest, on the land. The money was given me personally by Mr. Kribs, in cash in Roseburg, Oregon, at the time I made final proof. I have since paid Mr. Kribs the amount. **[1157]** I have sold the land to Mr. John A. Willd for $850. Out of that sum I paid the mortgage of $600 to Mr. Kribs.

Horace G. McKinley acted as the agent of Mr. Willd in purchasing the land. The purchase price of the land was paid me at Salem, Oregon, in cash.

I owned the land a month or a little over before selling it. I sold the land because I had other business that I wanted to look after and I was not sure that I would have the money to pay off the mortgage when it became due. I never made any contract or agreement either expressed or implied before I obtained title to the land to dispose of said land or any part thereof or any of the timber thereon to anyone.

JAY S. PHILLIPS.

Subscribed and sworn to before me this 13th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1158]**

Affidavit of S. A. D. Puter in U. S. Exhibit 42.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Fraudulent Entry of STEPHEN A. D. PUTER, of the Northwest Quarter of Section Twenty, Township Fourteen South, Range Three East.

STEPHEN A. D. PUTER, being first duly sworn according to law, testified as follows:

Q. State your name, age, occupation and residence.

A. Stephen A. D. Puter; fourty-four years of age; Berkely, California; Civil Engineer.

Q. Are you the same person who made timber entry No. 8168 for the above-described lands?

A. I am.

Q. Who, if anyone, first suggested to you the advisability of taking up this land as timber land?

A. Mr. H. G. McKinley.

Q. Who, if anyone, located you or showed you the land? A. I located it myself.

Q. When did you first examine the land personally? A. I believe it was in 1892 or 1893.

Q. Who, if anyone, went with you at the time you made your first examination of the land prior to filing thereon?

A. I don't recollect who was with me the first

time, but I was on the land with McKinley and some of the other parties who filed in the same township a few weeks before I made my filing.

Q. How did you identify the land which you examined as the land on which you afterwards filed? **[1159]**

A. By the corner stake and marks on the witness trees of the section.

Q. You may describe the land on which you filed.

A. The land is mountainous; altitude of about two thousand feet; rough and bro' n, cut up with gulches. The soil rocky and gravelly and covered with a dense growth of timber.

Q. Did you borrow any part of the money with which you paid the Government price for the land and the other expenses incident to the entry?

A. I did.

Q. From whom did you borrow the money?

A. Fred A. Kribs.

Q. How much did you borrow?

A. I believe it was six hundred dollars.

Q. State how the loan was secured, if at all.

A. By mortgage on the land.

Q. What disposition have you made of this land?

A. I have sold the land to John A. Willd.

Q. How long was it after you made the entry that you sold the land to Willd?

A. Cannot say positively as it was a short time; probably ten days or so. I don't recollect.

Q. Did you have the transaction with Willd personally, or did some one act as agent for Willd in making the sale? A. It was through his agent.

Q. Who? A. John Hanlon.

Q. You may state what connection you had with Mr. Willd personally, if any, in this transaction.

A. Had no transaction personally at all with him.

Q. Are you personally acquainted with Mr. Willd? A. I am not.

Q. How much did you receive for the land?

[1160]

A. I think it was nine hundred dollars.

Q. Was the money paid to you in cash or by check on a bank? A. Cash.

Q. Where was the money paid you?

A. Portland.

Q. Why did you dispose of the land so soon after having entered it?

A. The offer was made to me and on account of the mortgage being for a short time, I thought the best thing I could do was to sell the land.

Q. Have you seen the land in question since making your final proof? A. I have.

Q. State whether or not you made any contract or agreement, either expressed or implied, before you made your final proof, to sell this land, or any part thereof, or any of the timber thereon to anyone. A. None whatever.

Q. You may state what relation, if any, you are to Sadie E. Puter, who made cash timber entry No. 8183 for the Northeast quarter of Section Twenty, Township Fourteen south, Range Three East.

A. She is my wife.

Q. You may state whether or not, to your knowledge, the said Sadie E. Puter made a personal examination of said land prior to having applied at the Land Office to enter the same. A. She did.

Q. You may state whether or not you were with her at the time said examination was made.

A. I went with her myself over the particular quarter and showed her the same and informed her this was the quarter that she was to file on.

Q. You may state whether or not the said Sadie E. Puter borrowed any part of the money with which she paid for the land and the expense incident to the entry, and if so, of whom and the amount.

A. She borrowed the same amount that I did and from the same party and secured the same way. **[1161]**

Q. You may state what disposition she has made of the land, if any.

A. She sold the land to the same party that I sold to and at about the same time.

Q. You may state whether or not, so far as you know, your wife, Sadie E. Puter had any agreement, contract or understanding, either expressed or implied, with anyone prior to having entered said land, relative to a sale of the same, or any part thereof, or any of the timber thereon to anyone.

A. None whatever.

Q. You may state anything further which may occur to you in relation to your own entry, or that of your wife, which would be pertinent to this inquiry.

A. In regard to my wife's entry: After she had made her final proof, she was governed entirely by what I said in regard to the sale or disposition of the land.

S. A. D. PUTER.

Subscribed and sworn to before me this 1st day of October, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1162]**

Affidavit of Harry Saltmarsh in U. S. Exhibit 44.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Fraudulent Entry of HARRY C. SALTMARSH, No. 8176, for the NW. ¼ Sec. 24, Tp. 14 R. 3 E.

HARRY SALTMARSH, being first duly sworn, deposes and says:

Ques. State your name, age, occupation, and residence.

Ans. Harry Saltmarsh; age, 27; painter; Albany, Linn Co., Oregon.

Ques. Are you the person who made timber entry No. 8176, for the above-described land?

Ans. Yes.

Ques. Who, if anyone, suggested to you the advisability of taking up this land?

Ans. Dan Tarpley and Horace G. McKinley.

Ques. What did they or either of them say in regard to the matter at that time?

Ans. They said it was good property.

Ques. Did they or either of them at that time or at any other time before you obtained title to the land offer to furnish you a buyer for the land providing you would take it up? Ans. No, sir.

Ques. State what was said, if anything, by McKinley or Tarpley at that time or at any other time

as to what disposition if any you could or should make of the land.

Ans. There was nothing said in that regard.

Ques. Did you make a personal examination of the land before you applied at the land office to be allowed to enter it? Ans. Yes, sir. **[1163]**

Ques. Who, if anyone, went with you at the time you examined the land?

Ans. McKinley and Tarpley.

Ques. Who, if anyone, did you pay for locating you on the land? Ans. Mr. McKinley, $125.

Ques. Who is Dan Tarpley, where does he live and what is his business, if you know?

Ans. He lives in Salem, and the only business I ever knew him to be engaged in was a timber locator.

Ques. Have you seen the land since you made the examination above referred to?

Ans. Yes, sir.

Ques. When did you last see it?

Ans. I was there last summer.

Ques. How often did you see the land between the time you proved up on it and the time you sold it?

Ans. I was hunting on the land last September.

Ques. About how far is it from Albany, where you reside, to this land?

Ans. About 35 miles.

Ques. How did you go from Albany to the land the time you examined it with a view to entering it?

Ans. I went to Lebanon by train and the rest of the way by a hack.

Ques. Did you reach the land with a hack and team?

Ans. No, sir, I got within 5 or 6 miles of it in a hack and went the rest of the way afoot.

Ques. How did you identify the land you examined as the land which you afterwards entered?

Ans. We found the corner post.

Ques. Did you examine the particular land which you afterwards entered, or did you just look at the land in the neighborhood generally? **[1164]**

Ans. I looked at this particular land.

Ques. Describe the land.

Ans. The land lays on the side of the mountain and is covered with a heavy growth of valuable timber. Little or none of it is suitable for farming purposes.

Ques. Did you borrow the money or any part thereof with which you paid the Government for this land?

Ans. I did. I borrowed $600 of Frederick A. Kribs.

Ques. How is the loan secured, if at all?

Ans. By a mortgage on the land.

Ques. Did you have the transaction with Mr. Kribs personally, or did some one act as his agent in making the loan?

Ans. With Mr. Kribs personally.

Ques. Was the money paid you in cash or by a check on the bank? A. In cash.

Ques. Where was the money paid you at?

Ans. In Roseburg, Oregon, at the hotel.

Ques. Was there anything said at the time you borrowed the money in regard to Mr. Horace G. McKinley, Mr. Frederick Kribs, Mr. Stephen A. D. Puter, Mr. Dan Tarpley, John A. Willd or anyone

else becoming the purchaser of the land or the timber thereon after you had obtained title to the land?

Ans. No, sir.

Ques. What disposition, if any, have you made of the land?

Ans. I have sold it to John A. Willd.

Ques. How much did you receive for it?

Ans. $900.

Ques. Did you ever see Mr. Willd yourself?

Ans. No.

Ques. Who, if anyone, acted as the agent of Mr. Willd in purchasing this land from you? **[1165]**

Ans. Mr. Dan Tarpley.

Ques. Did he pay you in cash or by a check on the bank? Ans. In cash.

Ques. Where was the money paid you?

Ans. In Albany, Oregon.

Ques. How long was it after you made your proof and paid for the land before you sold it to Mr. Willd?

Ans. About a month.

Ques. Have you paid the mortgage of $600 which you gave on the land? Ans. I have.

Ques. To whom did you pay it?

Ans. To Mr. Kribs.

Ques. Where at? Ans. Here in Albany.

Ques. What was your reason for selling the land?

Ans. I needed the money, and I saw a chance to dispose of it, so I did so. I was told that some of the other boys were selling and thought it would be a good time for me to sell *to.*

Ques. State whether or not you ever made any contract or agreement, either expressed or implied before you made your final proof to sell or convey

this land or any of the timber thereon and if so, to whom?

Ans. I made no agreement or bargain with anybody.

Ques. State anything further that may occur to you as having a proper connection with or bearing on this case.

Ans. I know of nothing further.

HARRY SALTMARSH.

Subscribed and sworn to before me this 12th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [1166]

Affidavit of Zebulin Smith in U. S. Exhibit 46.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of ZEBULON SMITH, No. 8181, for the NW. ¼ Sec. 34, Tp. 14 S. R. 3 E.

ZEBULON SMITH, being first duly sworn, according to law, deposes and says:

Ques. State your name, age, occupation, and residence.

Ans. Zebulon Smith; age, 25; occupation, restaurant work; residence, Roseburg, Douglas County, Oregon.

Ques. Are you the same person who made timber entry No. 8181 for the land above described?

Ans. I am.

Ques. At whose suggestion did you make this entry? Ans. Horace G. McKinley's.

Ques. What did he say to you in regard to the matter?

Ans. He said it would be a good investment for a man.

Ques. Did he offer at the time to buy the land or to furnish you a buyer for it after you had entered the land? Ans. No.

Ques. State what was said, if anything by McKinley at that time or at any other time as to what disposition if any you could or should make of the land after you had obtained title to the same.

Ans. Nothing.

Ques. When did you first see this land if at all?

Ans. About two years ago, the first time.

Ques. Did you see it before you made your application at the land office to be allowed to enter it?

Ans. I did. **[1167]**

Ques. Who, if any one went with you at the time you examined the land prior to making your application? Ans. Dan Tarpley.

Ques. Were there any other parties went along whom you remember?

Ans. John J. Jaggy, Ira Pilkington, Douglas Atkinson, and several others whom I do not remember.

Ques. How did Tarpley happen to go along at that time?

Ans. He was employed by McKinley.

Ques. Why did McKinley employ him to go with you? Ans. He wanted to locate us.

Ques. Who, if any one did you pay for locating you on the land? Ans. I paid McKinley.

Ques. How much did you pay him?

Ans. $150.

Ques. What was the business of the other men who went along at the time?

Ans. They were looking for claims.

Ques. How did you go from the point where you left the railroad to the land?

Ans. Part of the way in a private conveyance and the rest of the way afoot.

Ques. Where did you leave the railroad?

Ans. At Halsey.

Ques. How long was it from the time you left Halsey till you got back to that point?

Ans. About three days.

Ques. How far did you have to walk?

Ans. I should judge about 10 or 12 miles.

Ques. Did the crowd remain together all the time? Ans. Yes.

Ques. How many wagon loads were there of the party? Ans. There were two. **[1168]**

Ques. Did you examine the particular land which you afterwards entered, or did you simply look at the land as a body? Ans. I examined it.

Ques. How do you know that the land which you examined was the land which you afterwards entered? A. I found the surveyor's corners.

Ques. Did you borrow the money or any part thereof with which you made your final proof?

Ans. I borrowed $600 from Frederick A. Kribs.

Ques. How was the loan secured, if at all?

Ans. By a mortgage on the land which I entered.

Ques. Did you have the transaction with Mr. Kribs personally or did some one act as his agent in making the loan? Ans. With Mr. Kribs.

Ques. Was the money paid you in cash or by a

check on the bank? Ans. In cash.

Ques. At what particular place was the money paid you?

Ans. I do not remember. Some place in Roseburg.

Ques. How did you come to borrow the money from Mr. Kribs?

Ans. I heard that he had money to loan.

Ques. Who told you he had money to loan?

Ans. I heard it on the street. I do not remember who told me.

Ques. Did you see Mr. Kribs yourself in regard to borrowing the money? Ans. I did.

Ques. Was there anything said at the time you borrowed the money in regard to Mr. Kirbs or any one else becoming the purchaser of the land or the timber thereon after you had obtained title to the same? Ans. No.

Ques. What disposition if any have you made of the land? Ans. I sold it to John A. Willd.

Ques. How much did you receive for it?

Ans. $800. **[1169]**

Ques. Did you ever see John A. Willd?

Ans. No.

Ans. Who, if any one, acted as the agent of Mr. Willd in purchasing this land of you?

Ans. Mr. John H. Shupe.

Ques. Who paid you the money for the land?

Ans. Mr. Shupe.

Ques. Did he pay you in cash or by a check on the bank? Ans. In cash.

Ques. How much actual cash did Mr. Shupe give you? Ans. $800.

Ques. Have you paid the mortgage of $600 you gave on the land? A. I have.

Ques. To whom did you pay the money?

Ans. To Mr. Kribs.

Ques. How long was it after you made your proof on the land before you signed the deed to Mr. Willd?

Ans. I do not exactly remember. About two weeks, I think.

Ques. How did it come that you sold the land so soon after you obtained title to it?

Ans. I needed the money.

Ques. State whether or not you ever made any contract or agreement either expressed or implied before you made your final proof to sell or convey this land or any part thereof or any of the timber thereon and if so, to whom? Ans. No.

Ques. State anything further that may occur to you as having a proper connection with this case.

Ans. I know of nothing further.

ZEBULIN SMITH.

Subscribed and sworn to before me this 9th day of July, 1901.

E. D. STRATFORD.
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [1170]

Affidavit of J. W. Stilwell in U. S. Exhibit 48.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of JACOB W. STILWELL of Lot 1 N. ½ of NE. ¼ of Sec. 32, SW. ¼ of SW. ¼ of Sec. 29, Tp. 14 S. R. 4 E.

State your name, age, occupation and place of residence.

Jacob W. Stilwell; 31; Brownsville, Linn Co., Or.; painter.

Q. How long have you resided in Linn Co., Or.?

A. All my life.

Q. Have you a family? A. Yes, a wife.

Q. About how far do you live from this land?

A. Over 30 miles.

Q. Did you make a personal examination of the land before you filed on it? A. I did.

Q. How often were you on the land previous to making your filing?

A. I was in the neighborhood several times.

Q. Who, if anyone, was with you at the time you examined the land with a view to entering it?

A. Dan Tarpley was with me.

Q. Who if any one, acted as a locator for you?

A. Dan Tarpley located me.

Q. How much, if anything did you pay him for his services? A. $50.00.

Q. You may describe this land having reference to the amount of agricultural or tillable land and its physical conditions.

A. It's hilly, mountainous; not tillable and unfit for agricultural purposes.

Q. Are you a practical woodsman?

A. No, sir.

Q. What did you expect to do with the land or the timber thereon at the time you filed on it?

[1171]

A. I expected to hold the land and sell the timber off of it.

Q. What disposition have you made of the land?

A. I sold it.

Q. To whom did you sell it and what did you receive for it? A. To John A. Wills, $800.00.

Q. State about how long it was, as near as you can remember after you made your final proof that you sold the land. A. About three weeks.

Q. Why did you sell the land so soon after you had obtained the title to it?

A. Several were selling out and I thought I wasn't going to get anything out of it. I was afraid that I would be left alone, and be forced to sell for less than the land cost me.

Q. From what source did you obtain the money with which you paid the Government for the land?

A. I borrowed the money from Mr. Kribs.

Q. How did you happen to go to Mr. Kribs for the money?

A. Horace McKinley had an advertisement that he had money to loan. I went to him for the money and he said he didn't have it, but referred me to Mr. Kribs.

Q. Did you have the transaction of the sale of the land with Mr. Wills personally, or did some one act as his agent in making the sale?

A. Stephen A. D. Pewter acted as his agent in the sale.

Q. Did you have any contract or agreement with Mr. Tarpley, Mr. McKinley, Mr. Kribs, or any other person prior to having made your final proof on the land in regard to what disposition you could or should make of the land after you had made your final proof?

A. I had no contract prior to that, until after I

had made the proof.

JACOB W. STILWELL.

Subscribed and sworn to before me, this 11th day of March, 1902.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1172]**

Affidavit of G. L. Thompson in U. S. Exhibit 50.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of GEO. L. THOMPSON, No. 8233, for the NW. ¼ Sec. 14, Tp. 14 S. R. 3 E.

GEO. L. THOMPSON, being first duly sworn according to law, deposes and says:

Ques. State your name, age, occupation and residence.

Ans. Geo. L. Thompson; age 38; occupation, barber; residence, Albany, Linn County, Oregon.

Ques. Are you the same person who made timber entry No. 8233 for the land above described?

Ans. I am.

Ques. Who, if any one, suggested to you the advisability of taking up this land?

Ans. Horace G. McKinley.

Q. What did he say to you in regard to the matter at that time?

Ans. He said that he was locating timber claims and wanted me to let him locate me on a claim.

Ques. Did he at that time or at any time before you obtained title to the land, offer to furnish you a buyer for it? Ans. No, sir.

Ques. State what, if anything, was said by Mr. McKinley at that time or at any other time as to what disposition if any you could or should make of the land.

Ans. There was nothing said about any disposition.

Ques. Did you make a personal examination of the land before you applied at the land office to be allowed to enter it? Ans. Yes, sir.

Ques. Who if any one, went with you at the time you examined **[1173]** the land the first time?

Ans. Daniel Tarpley, H. G. McKinley, and one of the Mealey boys.

Ques. Who, if any one, did you pay for locating you on the land? Ans. I paid McKinley $100.

Ques. Who is Dan Tarpley, where does he live, and what is his business, if you know?

Ans. I understand that he lives in Salem, but I have no personal acquaintance with him. He seemed to be assisting McKinley in making the locations.

Ques. Have you seen the land since you made the examination above referred to?

Ans. No, sir, I have not.

Ques. About how far is it from Albany, where you reside to this land?

Ans. I should judge about 40 miles.

Ques. How did you go from Albany to the land?

Ans. I went to Lebanon by rail, and took a team from there.

Ques. How near did you get to the land with the team? Ans. About 6 miles.

Ques. How did you identify the land you exam-

ined as the land which you afterwards entered?

Ans. I saw one of the corners and McKinley told me where the land lay, and we had a plat with us.

Ques. Did you examine the particular land which you afterwards entered, or did you simply look at the land as a body?

Ans. I examined the particular land which I entered.

Ques. Describe the land as to whether it was level or mountain land. Ans. It was mountain land.

Ques. How much if any of the land was suitable for agricultural purposes?

Ans. I would not consider any of it suitable for agriculture. **[1174]**

Ques. Did you borrow the money or any part thereof with which you paid the Government for the land?

Ans. I borrowed the money. I borrowed $600 from Kribs.

Ques. How was the loan secured, if at all?

Ans. By a mortgage on the land.

Ques. Did you have the transaction with Mr. Kribs personally, or did some one act as his agent in making the loan?

Ans. With Horace G. McKinley.

Ques. Was the money paid you in cash or by a check on the bank? Ans. In cash.

Ques. Was there anything said at the time you borrowed the money in regard to Mr. McKinley or Mr. Kribs or any one else becoming the purchaser of the land or the timber thereon, after you had obtained title to the same? Ans. No, sir.

Ques. What disposition, if any have you made of the land?

Ans. I sold the land to John A. Willd.

Ques. How much did you receive for it?

Ans. $800.

Ques. Did you ever see Mr. Willd yourself?

Ans. No, I have never seen him.

Ques. Who, if any one, acted as the agent of Mr. Willd in purchasing this land from you?

Ans. Horace G. McKinley.

Ques. Did he pay you in cash or by a check on the bank? Ans. In cash.

Ques. Have you paid the mortgage of $600 which you gave on the land? Ans. Yes, sir.

Ques. To whom did you pay the money?

Ans. Mr. Kribs.

Ques. How long was it after you made your proof on the land before you sold it to Mr. Willd? **[1175]**

Ans. I think it was a month or less.

Ques. What was your reason for selling the land?

Ans. I did not have the money at the time to hold it, so I sold it.

Ques. State whether or not you ever made any contract or agreement either expressed or implied before you made your final proof to sell or convey this land or any of the timber thereon and if so, to whom? Ans. No, sir, I made no contract.

Ques. State anything further that may occur to you as having a proper connection with or bearing on this case.

Ans. I know of nothing further.

GEO. L. THOMPSON.

Subscribed and sworn to before me this 11th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1176]**

Affidavit of Thos. Wilson in U. S. Exhibit 52.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of THOMAS H. WILSON, for the NW. ¼ Sec. 28 S. Tp. 14 S. R. 3 E.

No. 8171.

THOMAS H. WILSON, being first duly sworn, according to law, deposes and says:

My name is Thomas H. Wilson; my age is 36; my business is a stationer, and my residence is Portland, Oregon. I am the same person who made timber entry No. 8171 for the land above described.

I located the land at the suggestion of Mr. Daniel Tarpley, who located me, for which I paid him one hundred dollars. Tarpley went with me to examine the land, and I think two other parties went along who were looking for locations. Mr. Tarpley, who claimed to be acquainted with the land and the numbers, showed me the land and gave me a description of it.

The land is covered with a heavy growth of timber, and but little if any of it was suitable for agricultural purposes. I have not seen the land before or since the time when I examined as above stated. I never owned any land in that neighborhood. In going to the

land I went to Harrisburg on the train and from there went with a hack and team to within about 5 miles of the land, where I left the hack and went the balance of the way afoot.

I borrowed $600 of Mr. Frederick A. Kribs to pay the Government for the land, and the other expense incident to the entry. The money was borrowed for 3 months at 8 per cent interest, and was secured by a mortgage on the land entered. I had the **[1177]** transaction with Mr. Kribs personally, the money being paid me at Roseburg, Oregon, in cash, at the time the entry was made. I have since sold the land to John A. Willd, for $800, out of which sum I paid the mortgage of $600 to Mr. Kribs. Mr. Horace G. McKinley and Mr. Stephen A. D. Puter acted as the agents of Mr. Willd, in making the deal, the money being paid me by Mr. Puter in cash. I never made any agreement either expressed or implied, prior to having entered the land, to sell the same, or any part thereof to any one. I took the land up for speculation, and sold it when I thought I was getting what it was worth.

THOMAS H. WILSON.

Subscribed and sworn to before me this 17 day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1178]**

U. S. Exhibit No. 53.

REPORT OF FRAUDULENT CLAIM OR ENTRY.

1. Name of claimant: Ira A. Pilkington, Roseburg, Oregon.

2. Description of land covered by filing or entry: S. E. ¼ Sec. 26, Tp. 14 S. R. 3 E.

3. Date of examination:.....

4. Character of land: (Timber, Mineral, Agricultural, or Desert.) If timber land, whether, if cleared, it would be unfit for agriculture; if for timber-culture entry, whether section is naturally devoid of timber; if desert, whether grass or other agricultural crop could be produced without artificial irrigation; if mineral, character and evidence thereof:

Heavily timbered, rough mountain land, unfit for cultivation if cleared, and more valuable for its timber than for any other purpose.

5. Date and number of filing or entry; if proof has been made, date of proof and number of final certificate:

Cash T. & S. Entry No. 8169. Proof made April 18th, 1900.

6. Is the land in the present possession of any other party? If so, give the name of adverse occupant or claimant, and nature of claim: The land is not in the actual possession of any one.

7. Is the land inclosed for stock ranging or other purposes, and if so, by whom? Give extent of such inclosure, and describe the land inclosed: The land is not inclosed.

8. If an agricultural entry on timber land, state whether timber has been cut or removed, and when and by whom cut, and by whom or to whom sold: No timber has been cut or removed from the land. **[1179]**

DIAGRAM OF LOCALITY OF CLAIM.

9. Indicate on the diagram the tracts covered by the entry or filing, and all roads leading from the same, stating to and from what points they lead, and distances; also note by appropriate marks the location of buildings upon the land, and state in your explanation below the means adopted to identify the land as that covered by the claim under investigation.

Township No. 14 S. Range No. 3 E. Will. Mer.

Explanation. **[1180]**

10. Character, extent, and value of improvements in detail, when and by whom made, evidence of cultivation, amount and kind of crop, if any, and value of same. If a desert-land entry, evidence of reclamation, date and method of irrigating, by whom irrigating works were contructed, and cost of same. If a timber-culture entry, amount and date of breaking, planting, &c:

There are no improvements on the land.

11. Residence of claimant: When actually established on the land, and whether continuous for the period required. If the head of a family, of whom does the family consist; whether the family resides on the land, or has an actual residence elsewhere. State every fact relative to the good or bad faith of the claimant in establishing and maintaining actual residence, and whether he was legally qualified to

make the entry and is known in the neighborhood of the claim;

12. Evidence that the entry was made at the instance or in the interest of a party or parties other than the claimant: Whether sale or contract of conveyance has been made; date of sale or contract, name of purchaser or transferee, price given or agreed upon, nature and date of any instrument in writing, and whether the same has become a matter of record; whether the entry has been abandoned or relinquished, and if so, when and for whose benefit: Book 39 of Mortgages, page 11 records of Linn Co., Oregon, shows mortgage from Ira Pilkington to Frederick A. Kribs, consideration $600.00, dated April 19, 1900, Book 65 of deeds, page 561, shows deed to John A. Willd, consideration $1.00, dated April 23d, 1900.

13. Names, locality or residence, and postoffice address of witnesses; their reliability; abstract of their testimony: I attach hereto the testimony of the entryman in his own behalf, also copies of the testimony of Frederick A. Kribs, Dan Tarpley, Horace [1181] G. McKinley and Stephen A. D. Puter, and W. J. Drinkard.

14. Was the fraud willful?

15. Have any legal proceedings been instituted?

Horace G. McKinley was arrested, charged with fraud in connection with this and a number of other entries and on examination before U. S. Commissioner was discharged.

16. Action recommended by agent:

16. Continued. The history of this entry, is in brief as follows. During the months of January and February, 1900, there was filed in the Roseburg

Oregon Land Office, applications by 48 persons all I believe at that time, being citizens of the State of Oregon, to enter an equal number of tracts of vacant Government land, under the "Act of June 3rd, 1878."

The names of said entrymen are given below, the names in the first column being those who completed their entry by making final proof, and whose entry is under investigation, and those in the second column, being those who relinquished their entry, presumably in the interest of the Northern Pacific Railway Co.

The numbers in the first column are of final receipt, and those in the second column of the application.

No. 8168, Stephen A. D. Puter,	No. 411, James H. Doty,
" 8169, Ira A. Pilkington,	" 412, Lee Minard,
" 8170, Jno. L. Green,	" 413, John Pilkington,
" 8171, Thos. Wilson,	" 415, Sell Finley,
" 8172, Charles Barr,	" 421, Carrier Meyers,
" 8173, Charles Burley,	" 422, Geo. Meyers,
" 8174, Neal D. Dozier,	" 423, Vicie A. Turner,
" 8175, Basil H. Wagner,	" 424, Charles Farrell,
" 8176, Harry Saltmarsh,	" 425, C. I. Barr,
" 8178, Edwin Finley,	" 426, E. C. Brandeberry,
" 8179, John J. Jaggy,	" 427, Enos Conn,
" 8180, Jay S. Phillips,	" 429, Anthony T. Thompson,
" 8181, Zebulon Smith,	" 432, Edmond L. Arshambeau,
" 8182, Douglas Atkins,	" 434, Jennings F. Whitney,
" 8183, Sadie Puter,	" 435, Walter Boon,
" 8184, Josephine Jacobs,	" 436, Charles Brockett,
" 8186, Elaine S. Jacobs,	" 437, Charles T. Smith,
" 8231, Isac R. Borum,	" 438, Claud D. Lee,
" 8232, Benj. F. Kirk,	" 439, W. J. Drinkard,
" 8233, Geo. L. Thompson,	" 443, C. Frank Star,
" 8234, Peter Buffington,	" 444, Clarence Lerwell,

[1182]

No. 8243, Elaine Miller,	No. 445, Mattie McDaniel,
" 8177, Harry C. Barr,	" 450, Benjamin S. Henderson,
" 8185, Rufus Drum,	" 451, Robert S. Henderson.

These lands are located in Tp. 14 S., R.'s 2 and 3 E.,

in the East part of Linn County, Oregon, and constitute a valuable body of timber lands.

At the same time that these applications were being filed, the Northern Pacific Railroad Company had its agents and employees in the same locality, examining the same body of land with the idea of locating it. On the 9th day of March, 1900, the said Northern Pacific Railroad Company, by one Thomas Cooper, its "acting Land Agent," filed in the Roseburg Land Office, a notice of contest, alleging that said filings above named and each of them was not made in good faith; that the applicants do not intend to appropriate the land for his own exclusive use and benefit; that filing is made for speculation; that there is an expressed or implied agreement or contract for the sale of the land; that applicant never examined any part of said land and from personal examination does not know its condition, and the said contestant asked for a hearing in order that he might prove said allegations.

The same notice of contest was filed against each of the 48 entries above named.

On the 18th day of April, 1900, the said Northern Pacific Railroad Co. by H. M. Stephens, its attorney, filed in writing a motion to dismiss each of the contests instituted by it against the entries in the first column and on the same day filed a relinquishment for each of the entries, in the second *colum* above. The said Northern Pacific Company thereupon entered each of the tracts for which it had procured and filed relinquishments and each of the entries against which it had filed dismissals of contest was perfected by the

entryman making proof. **[1183]**

While these contests were pending, Horace G. McKinley was arrested, on a charge of subornation of perjury and brought before a United States Commissioner, who on examination discharged him. This arrest was for his alleged connection with these entries, and was at the instigation of the said Northern Pacific Co. Thus far I have stated the facts as shown by the records.

It is suggested by the Honorable Commissioners letter "P," of November 26th, 1900, ordering this investigation, that those persons who failed to make final proof, were probably deterred from making proof by this proceeding against McKinley, but I hardly think this suggestion correct, as McKinley had been discharged before any of these contests were disposed of. I think it more probable that they were pa*y*ed by the Northern Pacific Company to relinquish their claim to the land or that they were deterred by the fact that they were poor men and not financially able to contest their entry against a corporation such as they were contending with.

The first conclusion is *born* out by the fact that the record in the land office shows that the relinquishment in each case was filed by the attorney of the Northern Pacific Co., and in eac*e* cac*e* said Company entered the land relinquished. The second conclusion is *born* out by the testimony of W. J. Drinkard, who testified that he abandoned his entry for the reason that he was a poor man and not able to contest with a wealthy corporation.

It does not follow that these entries so relinquished

were not fraudulent in their inception nor as I believe that the parties relinquishing had not the right so to do either for or without a consideration paid by the Company, nor that when so relinquished, the said Company had not the right to enter the land. In any event I am unable to see in what manner the action taken by **[1184]** these entrymen who abandoned their entries, no matter for what reason, can become competent testimony affecting the entries which were completed. I shall therefore leave them out of the further discussion of the cases under investigation, only having refered to them in order that the whole history of there cases may be laid before the Department for its consideration.

The testimony which I have gathered and submit in these cases shows that with one or two exceptions, the entrymen were located or shown the land by Horace G. McKinley. The business of a locator appears to be a legitimate one. It is his business to inform himself of the location of vacant Government or State lands, locate the corners and boundaries thereof, estimate the amount and value of the timber, if it be timber lands, in some instances to open trails or roads to the lands, and to show said lands to prospective locators, for which information and service he is paid such a sum as may be agreed upon.

The record further shows that in each of the 24 entries under investigation, the entryman borrowed of Frederick A. Kribs the sum of $600.00, with which to pay the Government for the land and the expenses incident to the entry, giving a mortgage on the land entered, and that within a very few days after making

final proof, he sold the land to one John A. Willd, a resident of the state of Wis. who has never, as I am informed, been in Oregon.

As I understand my duty in these cases, in order to justify me in recommending these entries for cancellation, I must satisfy myself first that said entries are fraudulent. Second, I must be able to produce at a hearing or contest, such testimony proving said fraud in connection with the entry, as will justify the department, court or tribunal, before which said contest or hearing is had, in the cancellation of the entry.

That there are many circumstances connected with these **[1185]** entries, which bear the taint of fraud, is clear. That said circumstances are sufficient to justify the cancellation of the entry is another question. I have earnestly and conscientially, tried to do my duty in these cases. No one can understand the difficulties surrounding such investigations, who has not had such work to do. I am not allowed to go outside of a small district or territory in which I am located to look up testimony.

I am not allowed to spend a dollar, to procure said testimony, except in payment of my necessary traveling expenses.

I may not even pay a man for his time while he neglects his own business to give me such information as he may have. I can not employ a man to assist me in any way. I must be able to show by my weekly reports, just how I have employed every hour of my time. If I should report that I had spent 30 days in hunting evidence of fraud in these cases, and

that in so doing I had talked to 100 men who might be able to assist me, some of whom I knew and many more of whom I did not, I would probably be given 30 days annual leave without pay. If a contest is ordered, I may pay a witness to appear and testify, day wages, and his expenses. If he does not care to attend the hearing, I can not compel him to do so. The man who has invested $25,000.00 in these lands, is ready, especially if the entries are fraudulent, to spend $100 to protect his investment for every dollar which I may spend in an attempt to show the fraudulent nature of the entry. I am not complaining of these conditions, but these cases are of sufficient importance to justify me in refering to them.

In the Honorable Commissioners letter "P," 1901–41671, dated April 15th, 1901, I am given the names of Rufus Drum, Jennings F. Whitney and William J. Drinkard, as persons who could give some information in regard to these entries. I submit the testimony of William J. Drinkard. Rufus Drum is a Commercial Traveler, **[1186]** traveling out of Seattle, Washington, and I am unable to procure his testimony as he does not come into my teritory. I am informed however that he was present at the Roseburg Land office, at the date set for the contests herein refer*et* to, and that he positively denies having made any such statements as were attributed to him by Special Agent Mathers, and I have every reason to believe, that whether true or not, he will so testify. This conclusion is *born* out by the fact that he completed his entry by making final proof after the alleged statements to Special Agent Mathers.

Jennings F. Whitney is engaged as a w*at*er in a dance hall or beer hall at Portland, Oregon. He works all night and sleeps during the day. I have had three appointments with him to meet me at a place appointed by him in Portland, but in each instance he has failed to meet me. I have seen him at his work above mentioned, but could not take his testimony there. I am however certain that his testimony would be against me as he denied his testimony as given to Mr. Mathers, at the examination of McKinley, herein mentioned. He denied any knowledge of fraud in connection with these entries and explained his affidavit furnished Mathers, by saying that he was drunk when he signed it and did not know what he signed.

The question resolves *tis*self down to this, that if each of these 48 entrymen perjured himself in making the entry in which he was interested, then he has two motives for not admitting it. First the fear of punishment and second the pecuniary consideration. Against these I have nothing to offer that has any weight with such persons. Such testimony as these parties see fit to give me, I have, and submit it herewith; more than this I do not believe any man can get. I have examined many of the reported cases of this nature, and I do not recall a single case where the witness who had furnished testimony to a Special Agent, did not **[1187]** contradict it later on. At the trial of McKinley, herein refe*r*ed to the prosecution had the help of Special Agent Mathers, of the Northern Pacific Railroad with its agents and attorneys, of the *Unite* States Marshal, and the process of

the Court, to procure the attendance of witnesses, and yet they were unable to produce a single witness who could or would testify against him or give testimony implicating him in any fraud in connection with said entries. At the contest instituted before the Roseburg land office, *neithe* Special Agent Mathers or the Northern Pacific Co., was able to furnish one particle of testimony proving fraud in connection with these entries, and they were compelled to acknowledge the fact and ask that the contests be dismissed. If these people should so signally fail, why should I be blamed for not succeeding where they, with all their advantages, failed. I am frank to say that I have some reason to *believe* that every one of these entries were, and are fraudulent, but I am just as frank to say that I do not believe I can *prove* it. The testimony is before the Department, and if the Honorable Commissioner differs with me and thinks a contest should be ordered in these cases, after duly considering all the facts, and will so indicate, the cases can be returned *o* me, and I will, if desired, change my recommendation, and make the effort of my life, to have the entries cancelled, or to assist any one who might be detailed to conduct the contests. I think the number and importance of these entries, justify this extended review of the facts and testimony in the cases. For the reasons herein stated, I recommend that this and each of the entries herein mentioned be closed and that the land go to patent. **[1188]**

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entries in Tp. 14 S. R. 3 E., in Linn County, Oregon, under the "Timber and Stone Act."

W. J. DRINKARD, being first duly sworn, according to law, testifies as follows:

Ques. State your name, age, occupation and residence.

Ans. W. J. Drinkard; age, 39; occupation, farmer; residence near Halsey, Oregon.

Ques. Are you the same party who sometime during the month of January or Feby., 1900, filed an application with the Roseburg Land Office to be allowed to enter the SE. ¼ Sec. 28, Tp. 14 S. R. 3 E., under the "Timber and Stone Act"?

Ans. I am.

Ques. State whether or not you completed said entry. Ans. I did not.

Ques. State why you failed to complete the entry.

Ans. The Northern Pacific R. R. Company entered a contest against my entry and being a poor man and not able to engage in litigation with a corporation with this character, I abandoned the entry.

Ques. State whether or not you were in any manner induced to abandon said entry on account of fear that you would not be able to establish your right to the land under the law. Ans. No, sir.

Ques. Did the fact that Horace G. McKinley was arrested about that time under a charge of having fraudulently induced you and other parties to make

timber entries in any way influence you in your abandonment of this entry?

Ans. No, sir. **[1189]**

Ques. Do you know, or were you ever acquainted with S. S. Mathers who was a special agent of the General Land Office, with his headquarters at Roseburg, Oregon, during the first half of the year 1900?

Ans. No, sir.

Ques. I will describe him to you and you may state whether you ever had any conversation with him in regard to your entry or not, or whether you can recognize him from the description which I give you. He was at that time a man of something over 60 years of age. He was afflicted *wit a* lameness in his lower limbs which compelled him to use a cane and one crutch in walking. He had short whiskers or beard, considerably mixed with gray, and wore glasses. He was six feet or a little more in height and was a straight, well-proportioned man.

Ans. I never had any conversation with such a man in regard to my entry, and I have no recollection of ever having met such a man as you describe, in the year 1900, or at any other time.

Ques. State whether or not you ever stated to Mr. Mathers or any other person before the date set for final proof under your entry that Mr. Horace G. McKinley or any other person had induced you to make your application promising to pay all expenses and after entry was made either to buy the land himself or find a purchaser for it so that you would make $40 or $50 and perhaps more from the transaction or words to that effect.

Ans. No, I never made any such statement to any one.

Ques. State whether or not you made any contract or agreement either expressed or implied with Horace G. McKinley, Stephen A. D. Puter, Frederick A. Kribs, Dan Tarpley, John A. Willd, or any other person prior to making the application to be allowed to enter the land, to convey said land or any part thereof or any interest therein or any of the timber thereon to any one, after you should have **[1190]** obtained title thereto, and if so, with whom was said contract made and what were the terms and conditions thereof? Ans. I did not.

W. J. DRINKARD.

Subscribed and sworn to before me this 12 day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

[1191]

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of Certain Lands in Linn County, Oregon.

DAN W. TARPLEY, being first duly sworn, according to law, deposes and says:

Ques. State your name, age, occupation, and residence.

Ans. Dan W. Tarpley; age, 31; occupation, attorney; residence, Salem, Oregon.

Ques. How long have you lived in Salem?

Ans. About 13 years.

Ques. Are you acquainted with Horace G. McKinley, Frederick A. Kribs, Stephen A. D. Puter, and John A. Willd, or either of them?

Ans. I am acquainted with all the persona named except Willd.

Ques. State what, if anything, you have done during the last two years in regard to location of timber lands in the State of Oregon.

Ans. I have located and assisted McKinley and Puter in locating claims in Tp. 14, R. 3.

Ques. Describe the business of a locator of public lands and state what his relation is to the man who enters the land.

Ans. It is the business of a locator to look up lands which are valuable for timber or agricultural purposes and show them to parties who desire to locate on such lands, to furnish them the correct description or numbers of the land. For this service the locator is paid by the entryman such sum as may be agreed upon for his services.

Ques. In locating parties in Tp. 14 S. R. 2, 3, and 4 E. did you act alone or did you act as the agent or employee of Horace G. McKinley and Stephen A. D. Puter, or either of them? **[1192]**

Ans. I was working for them.

Ques. You may state the means employed by you in identifying the lands on which you located the different entrymen.

Ans. By running out the corners.

Ques. State the extent of the examination made by the different entrymen whom you located of the lands which they afterwards entered.

Ques. They went upon the land in each instance and examined the land personally and carefully.

Ques. Certain persons have testified before me that you acted as the agent of John A. Willd in purchasing of them the lands which they had entered. You may state the nature and extent of said agency.

Ans. In purchasing the land for Willd I did not act through instructions or employment directly from John A. Willd, but under instructions and authority given me for that purpose by Horace G. McKinley and Stephen A. D. Puter who claimed to have authority from the said Willd to purchase the land.

Ques. Certain persons have testified before me that you paid them various sums of money for the lands conveyed to Willd. You may state from whom you received the money to make such payment.

Ans. From S. A. D. Puter.

Ques. Did you go to Puter in each instance for the money which you required to pay for individual lands or did you have in your hands or under your control a lump sum from which you made such payment?

Ans. I went to Puter in each instance for the money which was required.

Ques. Did he give you the money in cash or by a check on the bank? Ans. In cash. **[1193]**

Ques. Certain persons who made entries in the townships above referred to have testified before me that they borrowed the money from Frederick A. Kribs with which they paid the Government for the land and the other expenses connected with their

entries. You may state whether or not you acted as the agent of Mr. Kribs in making any of these loans. Ans. No.

Ques. State whether or not at the time you made any of the locations in these townships you had any agreement or contract either expressed or implied with any of these entrymen in regard to a sale of the land which they were entering or of the timber thereon, to anyone. Ans. No.

DAN W. TARPLEY.

Subscribed and sworn to before me this 15th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

[1194]

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of Certain Timber and Stone Lands in Tp. 14 S. R. 3 E.

HORACE G. McKINLEY, being first duly sworn according to law, testifies as follows:

Ques. State your name, age, occupation, and place of residence.

Ans. Horace G. McKinley; age, 32; locator of and dealer in timber land. Residence, Portland, Oregon.

Ques. Describe fully the nature and extent of the business of a locator of timber lands.

Ans. Finding a tract of timber land, running out lines and corners, and taking the parties who wish

to locate on the land over the same, and generally assisting them in matters in connection with the land. I mean vacant Government land subject to entry.

Ques. Are you acquainted with the following named persons or any of them and if so, name those with whom you are acquainted, or rather, give the names of those with whom you are not acquainted. Stephen A. D. Puter, Ira A. Pilkington, John L. Green, Thos. Wilson, Charles Barr, Charles Burley, Neal D. Dozier, Basil H. Wagner, Harry Saltmarsh, Harry C. Barr, Edward Finley, John J. Jaggy, Jay S. Phillips, Zebulon Smith, Douglas Atkinson, Sadie E. Puter, Josephine Jacobs, Elaine S. Jacobs, Isaac R. Borum, Benjamin F. Kirk, Geo. L. Thompson, Peter Buffington, Elaine Miller and Rufus Drum?

Ans. I am acquainted with all of them.

Ques. Each of these persons has made a timber and stone entry. State which of these parties, if any, you located. **[1195]**

Ans. I located all of them, either in person, or by the assistance of Dan Tarpley, who was acting under my employ.

Ques. State whether or not in locating these parties on the land they entered, you had any agreement or understanding with them or either of them that you would purchase the land from them or procure a purchaser for them, for the land, after they had obtained title to the same and if so, state the nature and extent of such agreement or understanding.

Ans. There was no understanding that I should

purchase the land, but I told the parties that after the final proof was made, if they desired to sell, I would help them in all the ways I could to find a buyer.

Ques. Each of the parties above named shortly after having entered this land sold and transferred the same to one John A. Willd. You may state whether or not you acted as the agent of the said Willd in the purchase of said land, or any part thereof.

Ans. I was acting under instructions of Mr. S. A. D. Puter, who, I understood was the agent of Mr. Willd. In some cases I paid the parties for the land and took a deed in Mr. Willd's name, and turned the same over to Mr. Puter.

Ques. State whether or not you received any commission or compensation from Mr. Willd or the grantors for your services in connection with these transfers. Ans. I did not.

Ques. Each of the parties above named appears to have borrowed the money from Mr. Frederick A. Kribs with which he paid the Government for the land and the other expense incident to his entry. You may state if in any instance you acted for Mr. Kribs in making the loan or for the borrower in procuring the money and if so, state the nature and extent of your services in the transaction. **[1196]**

Ans. I understood the most of the parties mentioned were going to be obliged to borrow money with which to make final proof, as did also Mr. Puter and shortly before such proof was made I was informed by Mr. Puter that Mr. Frederick A. Kribs

was willing to advance the amount necessary for final proof and expenses connected therewith, and take a mortgage on the land for security. I informed most of the parties and they borrowed the money personally from Mr. Kribs.

Ques. You may state whether or not you received any commission or compensation from Mr. Kribs or the borrowers for your services in any instance in connection with these loans. Ans. I did not.

Ques. You may state whether or not you had any business relations with either Mr. Willd, Mr. Kribs, or Mr. Puter in relation to these entries or the sale or mortgage of the land entered other than that stated heretofore in this deposition and if so, state the nature and extent of the same.

Ans. I had none.

Ques. Are your acquainted with William J. Drinkard, Harry C. Barr, John J. Jaggy, and Jennings Whitney? Ans. I am.

Ques. State whether or not at the time you located them or either of them on the land on which they applied to enter, or at any other time before they had made final proof, you had any understanding, contract, or agreement, either expressed or implied that they or either of them should transfer said land to Mr. John A. Willd or any other person.

Ans. I did not.

Ques. A number of these entrymen have testified before me that they made the entry at your suggestion. You may state how you came to make such suggestion. **[1197]**

Ans. I knew of this tract of timber land. I re-

ceived a fee for locating parties and it was my business to find parties who desired to make such locations.

Ques. State whether or not you had any other or further interest in these entries or either of them than you have heretofore stated in this deposition.

Ans. I had none.

Ques. You may state anything further which may occur to you as having a proper relation with or bearing upon these cases.

Ans. I have nothing further to state.

HORACE G. McKINLEY.

Subscribed and sworn to before me this 17th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

[1198]

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of Certain Lands in Tp. 14 S. R. 3 E.

FREDERICK A. KRIBS, being first duly sworn according to law, deposes and says:

Ques. State your name, age, occupation, and residence.

Ans. Frederick A. Kribs; age, 41; occupation, locator and dealer in land; residence, Minneapolis, Minnesota.

Ques. You may state whether or not you are acquainted with the following named persons or any of them: Stephen A. D. Puter, Ira D. Pilkington,

John L. Green, Thos. Wilson, Charles Barr, Charles Burley, Neal D. Dozier, Basil H. Wagner, Harry Saltmarsh, Harry C. Barr, Edward Finley, John J. Jaggy, Jay S. Phillips, Zebulon Smith, Douglas Atkinson, Sadie E. Puter, Josephine Jacobs, Elaine S. Jacobs, Isaac R. Borum, Benjamin F. Kirk, Geo. L. Thompson, Peter Buffington, Elaine Miller, and Rufus Drum. If so, state the nature of your acquaintance with them.

Ans. I have met about all of these parties at the*y* time they established their final proof; with the *exception four* or five, I have but very little acquaintance with them. These four or five I have frequently seen since that time.

Ques. Each of the parties above named appear to have borrowed from you money amounting to about $600 with which he paid the Government for his land and the additional expenses incident to his entry. You may state how you came to make these loans.

Ans. A short time prior to the time of final proof I met Mr. Stephen A. D. Puter, in California. He was offering me a redwood deal in Humboldt Co., Cal. Very shortly after this transaction, he came to San Francisco, and stated that he wanted to borrow quite **[1199]** a sum of money, that he had agreed to furnish money for claimants who were to prove up on lands in Linn County, Oregon. After several interviews with him at his request I came up to Albany, Oregon, at or near the time that proof was to be established and I went over and made a hasty examination of the gr*e*ater part of these lands. I

regarded the lands as first class security for the amount of money wanted and when proof was made on the land, I advanced the money to complete the entries of the several pieces above mentioned, taking a mortgage from each of the claimants for $600, the amount and for about three months time, the best that I can remember.

Ques. You may state how it happened that each of the loans was paid off within a very short time after the loan was made, and before the loans became due.

Ans. Mr. Stephen A. D. Puter informed me some time after final proofs that he had made a sale of the lands and his parties requested a clean title with no encumbrances against the land. I released these mortgages and charged about the amount of interest at the time of release as I would have received when the same had become due.

Ques. Had you ever examined these lands prior to the time you have mentioned and have you seen them since that time?

Ans. That was my first trip into the State of Oregon, and I have seen the lands once since that time.

Ques. Are you well acquainted with the value of lands in Oregon, for the different uses to which they may be put with reference to their value as timber, agricultural, or grazing lands?

Ans. I am, in a general way.

Ques. From your examination of these lands on which you made loans, you may state for what purpose they would be chiefly valuable. **[1200]**

Ans. For the standing timber thereon.

Ques. You may describe the lands generally.

Ans. The lands are rather rough and mountainous, and in some places the country is quite broken and covered with a heavy growth of fir timber. I would regard the land for agricultural purposes as having no value and the same for grazing purposes at least until the timber shall have been removed and they might be of some value for grazing purposes.

Ques. Are you acquainted with John A. Willd?

Ans. I have never personally met the man, but I have had some little correspondence with him since he became the purchaser of these lands.

Ques. State whether or not you had any connection with the sale of these lands to the said John A. Willd, and if so, state the nature and extent of the same.

Ans. I had nothing to do with making the sale.

Ques. You may state what connection if any, you had with the location of the parties, or any of them on the land which they afterward entered.

Ans. I had nothing to do with the location, whatever. I was not in the country at the time.

Ques. State whether or not you had any understanding, contract, or agreement with these entrymen, or either of them either personally or through another, at the time you made the loans above referred to, that the land or the timber thereon should, after the entry was perfected, be transferred in any manner, to John A. Willd, or anyone else, and if so, state the nature and extent of said agreement or understanding.

Ans. I had no agreement or contract with anyone to that effect.

FREDERICK A. KRIBS.

Subscribed and sworn to before me this 15th day of July, 1901.

E. D. STRATFORD,
Special Agent, G. L. O.

[1201]

DEPARTMENT OF THE INTERIOR.
GENERAL LAND OFFICE.

In the Matter of the Fraudulent *Entry Certain* Lands in Township Fourteen South, Range Three East:

STEPHEN A. D. PUTER, being first duly sworn according to law, testified as follows:

Q. State your name, age, occupation and residence.

A. Stephen A. D. Puter; fourty-four years of age; Berkeley, California; Civil Engineer.

Q. Are you acquainted with Ira D. Pilkington, John L. Green, Charles Burley, Neal D. Dozier, Basil H. Wagner, Harry Saltmarsh, Harry C. Barr, Edward Finley, John J. Jaggy, Jay S. Phillips, Zebulon Smith, Douglas Atkinson, Josephine Jacobs, Elaine S. Jacobs, Isaac R. Brum, Benjamin F. Krik, George L. Thompson, Peter Buffington, Elaine Miller, Rufus Drum, either or all of them?

A. Slightly acquainted with all of them.

Q. You may state what, if anything, you had to do with locating them, or either of them, on the land which they have entered as timber land.

A. I had very little to do with the locating of those parties. H. G. McKinley, who was in that business, had informed me of the timber in those Townships, had given me descriptions of several Quarter Sections that were vacant and I located myself and wife and one or two of those parties. I believe it was Mrs. Jacobs and her daughter that I located. I informed them that I had seen the land and as they had not used their timber rights, I thought it was a good speculation for them to get a title to a quarter Section there. I told them what they had to do and where they could get the money to make final proof with and what it would cost them for a location fee and the money to pay for the land. The location fee went to McKinley. **[1202]**

Q. State what connection you had, if any, with the sale of the lands entered by these parties or either of them, to John A. Willd.

A. Several days after final proof was made Mr. Hanlon introduced himself to me as an agent of parties in Minnesota and wanted to know what I would take for my claims and if I could secure an option on all of the claims in that locality. He made me an offer and I went to work and secured the titles to most all of the claims.

Q. What do you mean by your statement that you procured titles to most of the claims?

A. I mean an option for a deed to the property for certain consideration.

Q. Give the full name of this man Hanlon, if you can. A. John E. Hanlon.

Q. Where does he live, and where did he live at that time? A. In Wisconsin.

Q. Who paid the parties for the land, you or Mr. Hanlon?

A. I paid most of them. Mr. Hanlon paid none of them.

Q. Who furnished you the money to pay the parties for the land?

A. After I had interviewed all the parties and found out what I could get their claims for, I informed Mr. Hanlon. He paid me the money to pay to those parties as fast as I could secure deeds. Some of them I paid myself, others I left the money, with Mr. Kribs and Mr. McKinley to pay on receipt of deeds.

Q. Was the money to pay for all of those lands furnished you in a lump sum, or in different amounts at different times?

A. It was furnished at two or three different times.

Q. Was the money paid to you in cash or were you given checks or drafts?

A. It was paid in cash.

Q. Do you remember how much was paid you or furnished you **[1203]** in the aggregate?

A. I think between twenty and twenty-five thousand dollars.

Q. Did you deposit the money, or any part thereof, in any bank, and if so, in what bank and in whose name?

A. I deposited part of the money in the First National Bank at Roseburg, also in Wells-Fargo & Company's Bank at Portland. Some of those parties I paid by check, others the cash. The money was deposited in my own name.

Q. You may state what connection, if any, you had with procuring Frederick A. Kribs to loan the money to these parties to make these entries and pay for the land. State fully your connection with that matter.

A. In the first place H. G. McKinley had promised to pay me a certain commission of his location fee, providing I should find a party who would advance the money for the expenses of proving up and paying for each and all of those lands. I contracted to do so and I interviewed several parties, one of them being Mr. Fred A. Kribs; I had met Mr. Kribs in San Francisco two weeks before final proof was made and told him all about those timber lands the locations, quality, etc., the amount of money I wanted and the interest I would pay. I took him to Oregon with me, took him onto those lands, as he wanted to see that they were timber lands and that the security was sufficient for the loan. He had partially promised me at that time to advance the money; he afterwards went over the lands himself and a few days before proving up agreed to let me have the money on certain conditions. Those conditions were that I was to pay him a certain rate of interest, but he would only advance the money for a very short time. At first my understanding was that he was to take the mortgage for one year with the privilege of extending it for two, but for some reason he changed his mind to a very short time. I had consulted most of the parties interested and as we had but a few days time before making final proof, we concluded to comply with his request. **[1204]**

Q. You may state what your compensation or

remuneration has been for your services in connection with these lands and by whom paid.

A. I have received about twenty-five dollars from McKinley for procuring the loan, in each case. I believe that came out of his location fee. I also received a commission on some of the claims at the time of sale. I don't recollect the particular parties now who paid that commission. As when Mr. Hanlon made me the offer, he made it at five dollars and a half per acre. Some of the claims I got for less than that price, some for more.

Q. Where commission was paid you on these sales, was it paid you by the buyer or the seller, or both? A. It was paid by the buyer.

Q. You may state what contract, or agreement you had with these parties, or any of them, before they made their final proof, as to who, if any one, should become the purchaser of the land, or of the timber thereon after they had obtained title to the same.

A. I had no contract or agreement with any of them. We had all agreed together to hold the land until it would become more valuable. Had not talked of selling to any one. The reason why we made the sale so soon after proving up was that the mortgage was made for so short a time that I concluded as we had a fair offer for the land, it was better to sell it than to pay such a rate of interest and take chances of foreclosure and losing the land. Mr. Hanlon required an abstract showing clear title. The Notes to Mr. Kribs were paid up to date when due in order to get release from him.

S. A. D. PUTER.

Subscribed and sworn to before me, this 1st day of Oct., 1901.

E. D. STRATFORD,
Special Agent G. L. O. **[1205]**

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of IRA A. PILKINGTON, No. 8169, for SE. ¼ Sec. 26, Tp. 14 S. R. 3 E.

IRA A. PILKINGTON, being first duly sworn according to law, testified as follows in relation to said entry:

Ques. State your name, age, and place of residence.

Ans. Ira A. Pilkington; age, 23 years; residence, Roseburg, Douglas County, Oregon.

Ques. Are you the same person who made timber entry No. 8169 for the land above described?

Ans. I made an entry, and I presume the numbers are correct, but I do not remember the numbers.

Ques. How did you come to make this entry?

Ans. A man by the name of McKinley offered to locate me on the land, and thinking it would be a good investment, I made the entry.

Ques. Was it Horace G. McKinley?

Ans. Yes.

Ques. What agreement did you have with McKinley in regard to locating?

Ans. I was to pay him a certain sum of money.

Ques. How much were you to pay him for locating you on the land? Ans. $150.

Ques. What was he to do in the way of locating you? Ans. He was to show me the land.

Ques. What representation, if any, did he make to you at that time in regard to the nature and value of the land?

Ans. He said it was valuable timber land.

Ques. What, if anything, was said by McKinley at that time or any other time in regard to what disposition, if any, you could or should **[1206]** make of the land after you had entered it?

Ans. Nothing.

Ques. State whether or not you made a personal examination of the land before you filed on it.

Ans. I did.

Ques. Who, if any one, went with you at the time you examined the land?

Ans. Dan Tarpley.

Ques. Where did you leave the railroad at the time you went to the land? Ans. At Halsey.

Ques. How did you go from Halsey to the land?

Ans. I went in a private conveyance part of the way, and the rest of the way afoot.

Ques. How did Tarpley happen to go with you through the land?

Ans. He was employed by McKinley to show me the land.

Ques. Where does Daniel H. Tarpley live now, if you know? Ans. I do not know.

Ques. What means did you take to identify the land as being the land which you afterwards entered?

Ans. I found the surveyor's corners.

Ques. State the nature and kind of land it was

as to its being timber land, and whether it was rough or smooth.

Ans. It was mountain land and heavily covered with timber.

Ques. Where did you get the money to pay for the land?

Ans. I borrowed it from a man by the name of Kribs.

Ques. Frederick A. Kribs?

Ans. Yes, sir.

Ques. How much money did you borrow from him, for how much time, and at what rate of interest? **[1207]**

Ans. I borrowed $600 for 90 days, at 10 per cent interest.

Ques. How did you come to borrow the money from Mr. Kribs?

Ans. I heard that he had money to loan.

Ques. Who told you he had money to loan?

Ans. I could not say. I heard it on the street.

Ques. Was there anything said at the time you borrowed the money in regard to Mr. Kribs or any one else purchasing the land or the timber thereon after you had obtained title to the land?

Ans. No.

Ques. What disposition, if any have you made of the land? Ans. I sold it.

Ques. To whom did you sell it?

Ans. To John A. Willd.

Ques. How much did you receive for the land?

Ans. $800.

Ques. Did you see Mr. Willd at the time you made the sale to him? Ans. No.

Ques. Who acted as the agent of Mr. Willd in making the sale?

Ans. John H. Shupe made out the papers.

Ques. Who paid you the money?

Ans. Mr. Shupe.

Ques. Did he pay you the full $800 or the difference between that amount and the amount of the mortgage? Ans. He paid me $800.

Ques. How did he pay you, in cash, or a check on the bank? Ans. In cash.

Ques. Did you pay the $600 mortgage to Kribs out of that amount, or has the mortgage been paid yet? Ans. I paid it out of that amount.

Ques. Who first mentioned to you the subject of selling the land to Mr. Willd? **[1208]**

Ans. I heard on the street that he was buying timber land, and I afterwards talked to Mr. Shupe.

Ques. How did you come to sell the land so soon after you had made your final proof?

Ans. I needed the money.

Ques. State whether or not you ever made any contract or agreement either expressed or implied before you made your final proof to sell or convey this land or any part thereof or any of the timber thereon to any person, and if so, to whom prior to your having sold the same to Willd.

Ans. None whatever.

Ques. Did you at any time, either before or after you had made your final proof and prior to having transferred the land to Willd have any conversation with Mr. Horace McKinley, Mr. Stephen A. D. Puter, or Mr. Frederick A. Kribs, relative to a sale of this land or any part thereof or any of the

timber thereon to any one? If so, state with whom the conversation was had and the substance of the same. Ans. None whatever.

Ques. State anything further which may occur to you as having *or have* any connection with or bearing on this case.

Ans. I know of nothing.

IRA A. PILKINGTON.

Subscribed and sworn to before me, this 8th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

Dated at Roseburg, Or., Dec. 9, 1901.

E. D. STRATFORD,
Special Agent, General Land Office.

[1209]

(ENDORSEMENTS):

23

396 U. S. LAND OFFICE, 21270 13
Received Feb. ——, 1902.

932 DEPARTMENT OF THE INTERIOR.
Received Apr. 28, 1902.
L. & R. R. Div.

REPORT OF
E. D. STRATFORD, Special.
Agent, G. L. O.
Roseburg, Ore., Dec. 9th, 1901.

In the case of T. & S.
Entry No. 8169.
L. O. Roseburg, Or.
Name: Ira A. Pilkington.

Tract ———.

S. E. ¼

Sec. 26, Tp. 14 S. R. 3 E.

No. of report: 104

Date of office letter directing the investigation: Nov. 26, 1900.

April 15, 1901.

Ack. Feby. 5, 1902.

3/28/02 Entry intact. G. R. O.

P. 3.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1210]**

U. S. Exhibit No. 64.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

In the Matter of the Alleged Fraudulent Entry of BASIL H. WAGNER, No. 8175, for the SW. ¼ Sec. 28, Tp. 14 S. R. 3 E.

BASIL H. WAGNER, being first duly sworn according to law, deposes and says:

Ques. State your name, age, occupation, and residence.

Ans. Basil H. Wagner; age, 28; bookkeeper, Salem, Marion Co., Oregon.

Ques. Are you the same party who made timber entry No. 8175, for the above described land?

Ans. I am.

Ques. Who, if any one, suggested to you the advisability of taking up this land?

Ans. No one.

Ques. Who, if any one, assisted you in making the selection and location of the land?

Ans. I located it myself.

Ques. Did you pay Horace G. McKinley, Dan Tarpley, or any other person for assisting you in making the selection and location of the land. If so, how much? Ans. Nothing.

Ques. Did you make a personal examination of the land which you afterwards entered prior to making application at the land office to be allowed to make such entry? Ans. I did.

Ques. Who, if any one, accompanied you at the time you made said examination?

Ans. No one.

Ques. How did you travel from Salem to the land you entered at the time you made such personal examination? **[1211]**

Ans. I left the railroad at Brownsville, Or., went from there in a buggy to about 15 miles of the land, and went from there to the land afoot.

Ques. About how far is this land from Brownsville? Ans. About 30 miles.

Ques. Were you acquainted in the neighborhood of this land prior to making this investigation?

Ans. Yes, sir.

Ques. How did you identify the land which you examined at that time with the land which you afterwards entered?

Ans. By the landmarks and the blazes on the trees.

Ques. Did you make a personal examination of this particular tract of land, or did you simply look at the land in the neighborhood generally?

Ans. I was on this particular land.

Ques. Describe the land.

Ans. The land lays on the side of a mountain and

is heavily timbered and unfit for agricultural purposes.

Ques. Have you seen the land in question since you made your final proof? If so, when and how often? Ans. No.

Ques. Did you borrow the money or any part thereof with which you paid the Government for the land? If so, give the amount borrowed, from whom, and the manner of securing the loan.

Ans. I borrowed $600 from F. A. Kribs, secured by a mortgage on the land.

Ques. Did you have the transaction with Mr. Kribs, personally, or did some one act as his agent in making the loan? Ans. With Mr. Kribs.

Ques. Was there anything said at the time you borrowed the money relative to Mr. Kribs or any one else becoming the purchaser of **[1212]** the land or any of the timber thereon, after you had obtained title to said land? Ans. No, sir.

Ques. What disposition if any have you made of the land? Ans. I sold it to John A. Willd.

Ques. How much did you receive for it?

Ans. $830.

Ques. Did you have the transaction with Mr. Willd in person, or did some one act as his agent in making the sale?

Ans. The transfer was effected through Mr. H. G. McKinley, acting as agent for Mr. John A. Willd.

Ques. Was the purchase price of the land paid you in cash or by a check on the bank?

Ans. In currency and gold.

Ques. Have you paid the mortgage on the land, and if so, to whom?

Ans. Yes, sir, to Mr. Kribs.

Ques. About how long was it after you made your final proof on the land in question until you transferred the land to Mr. Willd, as above stated?

Ans. About three weeks, as near as I can remember now.

Ques. What was the motive which induced you to make a sale of the land so soon after acquiring title to the same?

Ans. I could use the money I got from the land to good advantage.

Ques. Were you the owner of any other real estate or any interest therein in the neighborhood of this land at the time you entered it?

Ans. No.

Ques. Did you, prior to making an application to be allowed to enter this land, make any contract, either expressed or implied, for the sale of this land or any part thereof or any interest therein or any of the timber thereon? Ans. No. **[1213]**

Ques. State anything further which may occur to you as having a proper relation to this case.

Ans. I know of nothing.

BASIL H. WAGNER.

Subscribed and sworn to before me this 13th day of July, 1901.

E. D. STRATFORD,
Special Agent G. L. O.

[1214]

U. S. Exhibit No. 69.

HENRY BLAKELEY, of Brownsville, Oregon, being first duly sworn, deposes and says:

About January, 1900, as I now remember it, Mr. John Harrison informed me that he had received word from Horace McKinley that he had seven timber claims and wanted to get persons to file on same, that there would be $75 in it for us and all necessary expenses. I spoke to my son, Hugh Blakeley, and he accompanied us to the land office at Roseburg, Oregon, where we made filings. We shortly afterwards visited the land in the manner recited by Mr. Harrison in his affidavit of this date.

About three months later we made final proof at Roseburg, and after doing so I signed a note which I think was to the order of Frederick A. Kribs, also a mortgage, which I believe was to secure the payment of the note. After making final proof and signing these papers, I was paid $75 and expenses, amounting to about $110, by Horace McKinley. A few days later Dan Tarpley called on me at my home at Brownsville and had me sign a deed for the land to John A. Willd.

Some time later, I think Mr. Harrison notified me that a special agent of the land office would call on us to obtain an affidavit, which he subsequently did, and I had nothing further to do with the transaction until I was subpoenaed to appear before the grand jury in Portland a few days ago.

HENRY BLAKELY.

Subscribed and sworn to before me this 29th day of December, 1904.

W. J. BURNS,
Special Agent, G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. [1215]

U. S. Exhibit No. 70.

AFFIDAVIT.

JOHN HARRISON, of Brownsville, Oregon, deposes and says:

I think it was some time in January, 1900, that I received a telephone message from Horace McKinley stating that he had seven timber *claim* and wanted me to take one, and also get six other parties, that there would be $75 apiece in it for us. I then spoke to Henry Blakeley and my son, F. J. Harrison. I learned that Mr. Blakeley saw his son, Hugh Blakeley, Frank W. Burford, Jacob Stillwell, and J. B. Cooley. We then went to the Roseburg land office where we made our filings, and returned home. Subsequently, in company with Horace McKinley and Dan Tarpley, we went to the house of the Mealey boys, and from there visited the lands, and then returned to our homes. About three months later we again went to Roseburg to make final proof. After making final proof McKinley paid me $75 and whatever expenses I had incurred in the transaction. I met Frederick A. Kribs at the time of making final proof in Roseburg, and asked McKinley to speak to Kribs about his giving me some work, but Kribs did not employ me until about a year and a half afterwards.

After making final proof I signed, to the best of my recollection, a note to Mr. Kribs and a mortgage to secure the note. Some time later after signing these papers Dan Tarpley called at my house and had me sign a deed to the land to John A. Willd, and then returned to me the note. I do not remember

whether he returned the mortgage or not.

The next time I had anything to do with the transaction was when I received word from McKinley that a special agent would call at Brownsville to take an affidavit from me in regard to the land. Subsequently, the agent did call and took my affidavit as to whether **[1216]** or not the land was taken in good faith, etc.

This was the last I heard of the matter until I was subpoenaed to go before the grand jury.

JOHN HARRISON.

Subscribed and sworn to before me this 29th day of December, 1904.

W. J. BURNS,
Special Agent, G. L. O.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1217]**

U. S. Exhibit No. 189.

In the Circuit Court of the United States for the District of Oregon.

No. 3320.

UNITED STATES OF AMERICA,
Complainant,

vs.

NILS O. WERNER et al.,
Defendants.

It is hereby stipulated and agreed by and between the complainant and defendants, by their respective solicitors, that the records of the United States Land Office at Roseburg, Oregon, show that there were contests filed in said office by the Northern Pacific Railway Company against each of the Timber and Stone entries involved in this suit, and against the

respective entrymen claiming said lands, and also against twenty-four Timber and Stone entries made about the same time of the entries involved herein and under the same circumstances; that the contest affidavits above mentioned were filed in said United States Land Office, against the persons and upon the dates as follows:

Name of Entryman.	Date Contest Filed.
Harry Salrmarsh	March 9, 1900
Ira A. Pilkington	" "
Douglas Adkinson	" "
James H. Doty	" "
Lee Minard	" "
John Pilkington	" "
Rufus Drum	" "
Sell Finley	" "
Edward Finley	" "

[1218]

Name of Entryman	Date Contest Filed.
Charles Barr	March 9, 1900
Charles Burley	" "
Jay S. Phillips	" "
John L. Green	" "
Carrie L. Meyer	" "
H. George Meyer	" "
Vicie A. Lunn	" "
Charles Farrell	" "
C. I. Barr	" "
E. C. Brandeberry	" "
Enos Conn	" "
Thomas Wilson	" "
Anthony T. Thompson	" "
Zeblin Smith	" "
Neal D. Dozier	" "

Name of Entryman	Date Contest Filed.
Edmond L. Archambeau	March 9, 1900
John J. Jaggy	" "
Jennings F. Whitney	" "
Walter Boone	" "
Charles Brochett	" "
Charles F. Smith	" "
Claude D. Lee	" "
W. J. Drinkard	" "
Stephen A. D. Puter	" "
H. C. Barr	" "
Basil H. Wagner	" "
C. Frank Starr	" "
Clarence Lerwill	" "
Mrs. Mattie McDaniel	" "
Mrs. Elmira S. Jacobs	" "
Josephine Jacobs	" "
Sadie E. Puter	" "
Elam Miller	" "
Benjamin F. Snyder	March 17, 1900
Robert S. Henderson	" "
Peter Buffington	" "
J. R. Borum	" "
George L. Thompson	" "
Benjamin F. Kirk	" "

G

That said contest affidavits were each, with the exception of the name, number of entry and date of filing, as follows:

State of Washington,
County of Pierce,—ss.

Personally appeared before me, C. H. Knapp, a Notary Public in and for the State of Washington,

residing at Tacoma in said County and State, Thomas Cooper of the same place, who upon his oath says: **[1219]**

That he is the duly appointed and acting Western Land Agent of the Northern Pacific Railway Company, for its Western District comprising the states of Washington, Oregon and Idaho, and that he makes this affidavit in behalf of said Northern Pacific Railway Company;

That he is well acquainted and informed regarding the land described in the caption thereof embraced in the timber land application of the aforesaid ————, No. ———, filed ————, 1900; also that he is informed and believes that said applicant does not apply to purchase the land in good faith to appropriate it to his own exclusive use and benefit as required by law, but that his application is made for the purpose of speculation and in the interest and for the benefit of other parties by whom said applicant was unduly influenced or employed to make said application, and that said filing was made for the purpose of appropriating the same to the use and benefit of other persons and under an express or implied contract and agreement with other persons for the sale thereof; that said applicant did immediately before or after making said filing execute and deliver to the said person or persons either a contract to that effect, or an agreement, relinquishment, or mortgage of his rights to said land; that said applicant never personally examined said land or any part thereof and had no personal knowledge whatever that said land was or is unfit for cultivation and valuable chiefly for its timber, and that it is

uninhabited, and that it contains no mining or other improvements, and this the said contestant is ready to prove at such time as may be named by the Register and Receiver for a hearing in said case; and said contestant therefor*s* asks to be allowed to prove said allegations and that said timber land application No. ——— may be declared canceled and forfeited to the United States—the said contestant paying the expenses for such hearing.

THOMAS COOPER.

Sworn to and subscribed this 5th day of March, 1900.

[Seal] C. H. KNAPP,

Notary Public in and for the State of Washington, Residing at Tacoma, Pierce County, in said State.

That the contest docket of said United States Land Office shows that the said Northern Pacific Railway Company dismissed its said contests against all of the following entries on the following dates herein set forth:

Name of Entryman.	Date Dismissed.
Harry Saltmarsh	April 18, 1900
Ira A. Pilkington	" "
Douglas Adkinson	" "
Rufus Drum	" 19, "
Edward Finley	" 18, "
Charles Barr	" "
Charles Burley	" "

[1220]

Name of Entryman.	Date Dismissed.
Jay S. Philips	April 18, 1900
John L. Green	" 19, "
Thomas Wilson	" 18, "

Name of Entryman.	Date Dismissed.
Zeblin Smith	April 18, 1900
Neal D. Dozier	" "
John J. Jaggy	" "
Stephen A. D. Puter	" "
H. C. Barr	" "
Basil H. Wagner	" "
Elmira S. Jacobs	" 20, "
Josephine Jacobs	" 19, "
Sadie E. Puter	" 18, "
Elam Miller	May 1, "
Peter Buffington	" "
J. R. Borum	" "
George I. Thompson	" "
Benjamin F. Kirk	" "

That the said contest docket of said United States Land Office further shows that the Northern Pacific Railway Company filed relinquishments in said United States Land Office covering the entries of the above named persons as follows and upon the dates set opposite the respective names:

Name of Entryman	Date of Relinquishment.
James H. Doty	April 18, 1900
Lee Minard	" "
John Pilkington	" "
Sell Finley	" "
Charles Farrell	" "
C. I. Barr	" "
E. C. Brandeberry	" "
Enos Conn	" "
Anthony T. Thompson	" "
Edmond L. Archambeau	" "
Jennings F. Whitney	" "

Name of Entryman.	Date of Relinquishment.
Walter Boon	April 18, 1900
Charles Brochett	" "
Charles F. Smith	" "
Claude D. Lee	" "
W. J. Drinkard	" "
C. Frank Starr	" "
Clarence Lerwill	" "
Mrs. Mattie McDaniel	" "
Benjamin F. Snyder	" "
Robert S. Henderson	April 19, 1900

That said contest docket further shows that the following entry was made upon the filing of said relinquishments:

"N. P. Ry. Co. attorneys file relinquishment of entrymen and have preference right of entry.

Case closed."

[1221]

That the records of said United States Land Office further show that the Northern Pacific Railway Company on April 23, 1900, made Northern Pacific lieu selections for each of the entries relinquished as above set forth.

(Signed) JOHN McCOURT,
United States Attorney.

JOHN LIND,
A. UELAND,
W. M. JEROME,
J. M. GEARIN,
By A. N.
FREDERICK A. KRIBS,
By A. H. TANNER,
Solicitors for Defendants.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1222]**

U. S. Exhibit No. 190.

CASE 3320.

KRIBA' BANK ACCOUNT NO. 1.

ROSEBURG.

Deposits. 1900.						Checks. 1900.			
Apr.	17.	$30,000.00	July	9.	21.60	Sep.	11.	$ 17.50	
"	30.	5,000.00	"	10.	500.00	"	12.	10.00	
May	11.	40,000.00	"	"	952.00	"	15.	1,341.56	
"	15.	20,000.00	"	11.	142.65	"	"	288.00	
"	23.	20,000.00	"	12.	55.50	"	17.	12.00	
July	11.	10,000.00	"	"	35.00 b	"	"	75.00	
"	14.	100.00	"	14.	50.00	"	18.	4.50	
"	24.	30,000.00	"	21.	20.00	"	20.	261.50	
Aug.	21.	15,000.00	"	21.	50.00	"	"	1,894.40	
Sep.	11.	17,000.00	"	"	100.00	"	"	10.00	
"	21.	5,000.00	"	"	1500.00	"	"	458.50	
Oct.	8.	7,000.00	"	23.	150.00	"	"	1,500.00	
Dec.	13.	10,000.00	"	24.	6.70	"	"	1,000.00	
			"	"	200.00	"	"	539.30	
			"	""	25.00	"	"	63.20	
Checks. 1900.			Aug.	3.	25.00	"	"	150.00	
			"	4.	500.00	"	21.	250.00	
Apr.	20.	$7,200.00	"	"	161.65	"	"	247.20	
"	"	410.75	"	6.	25.00	"	"	250.00	
"	25.	200.00	"	"	300.00	"	"	125.00	
"	26.	7,349.25	"	7.	50.00	"	"	42.50	
"	27.	25.00	"	9.	11.00	"	24.	*1,690.00*	
"	"	11,062.72	"	10.	75.00	"	25.	333.34	
"	28.	1,000.00	"	11.	29.15	"	"	542.53	
"	30.	3,840.00	"	13.	8.50	"	"	542.53	
May	3.	1.00	"	14.	20.00	"	"	333.33	
May	7.	20.00	"	15.	17,000.00	"	27.	333.33	
"	"	1.00	"	16.	200.00	Oct.	9.	130.00	
"	11.	3,500.00	"	"	389.44	"	"	260.00	
"	16.	1,000.00	"	"	8.80	"	"	542.33	
"	17.	5,962.60	"	17.	1,642.04	"	10.	4,155.68–L. Office	
"	23.	28,314.40	"	27.	1,500.00	"	12.	34.00	
"	"	112.90	"	28.	329.51	"	"	22.50	
"	"	9,000.00	"	29.	100.00	"	17.	410.61	
June	5.	8,880.00	"	"	10.00	"	19.	3.00	
"	"	125.00	"	"	420.00	"	20.	15.00	
"	6.	100.00	"	"	1,000.00	"	23.	200.00	McM
"	7.	1.00	"	30.	100.00	"	27.	1.00	
"	9.	125.00	"	"	1,249.45	Nov.	2.	20.00	
"	13.	993.50	"	"	269.50	"	7.	2.00	
"	14.	250.00	"	31.	200.00	"	9.	50.00	
"	"	17.30	"	"	6.50	"	11.	300.00	
"	"	160.00	Sep.	1.	1.00	"	22.	1.50	
"	16.	3.00	"	"	3,696.46	Dec.	8.	100.00	
"	19.	33.50	"	4.	5.50	"	10.	200.00–L W	
"	"	8,500.00	"	"	429.52	"	"	75.00	
"	29.	100.00	"	5.	16.30	"	11.	485.21	
July	2.	100.00	"	6.	329.49	"	"	375.00	
"	3.	100.00	"	"	5.00	"	12.	2.70	
"	7.	50.00	"	"	6.00	"	13.	250.00	
"	9.	200.00	"	10.	5.00	"	"	25.00	
"	"	75.00	"	11.	16,968.00	"	"	38.00	
"	"	39.00	"			"	"	125.00	

CASE 3320.

KRIBS' BANK ACCOUNT NO. 1 & 2.

ROSEBURG, OREGON.

2

Checks.
1900.

Dec.	13.	$638.00
"	"	940.00
"	"	76.00
"	"	8.25
"	"	940.82
"	"	76.00
"	"	8.25
"	"	940.82
"	14.	436.79
"	"	850.00
"	17.	7.50
"	"	175.00
"	"	350.00
"	"	219.35
"	18.	30.00
"	19.	50.00
"	"	50.00
"	20.	100.00
"	21.	442.00
"	"	150.00
"	28.	8.50
"	29.	25.00
"	"	1,000.00
"	"	1,800.00
"	31.	12.00
"	"	125.00

ACCOUNT NO. 2.

Deposits.
1900.

Apr.	30.	$45,000.00
May.	17.	30,000.00
1901.		
Jan.	21.	15,000.00

Checks.
1901.

May	1.	$ 11.50
"	"	10,167.94
"	5.	11.50
"	10.	32,771.57
"	"	400.00
"	17.	371.85
"	"	14,502.18
"	22.	7.50
June	11.	15.50
"	14.	405.75
"	19.	8,500.00

Checks.
1900.

July	14.	$1,199.00 Er.
"	17.	6,635.71 S.
1901.		
Feb.	15.	25.00
"	"	1,470.00
"	"	750.00
"	"	150.00
"	"	58.25
"	"	275.00
"	16.	317.76
"	"	637.68
"	18	4.00
"	"	42.00
"	"	260.00
"	19.	23.50
"	28.	110.00
Mch.	1.	6.75
"	2.	1.00

Checks.
1901.

Mch.	2.	$ 2.75
"	4.	500.00
"	5.	75.00
"	"	125.00
"	"	50.00
"	"	32.00
"	6.	125.00
"	"	358.30
"	"	392.35
"	"	20.00
"	8.	200.00
"	"	6.00
"	"	75.00
"	"	400.00
"	21.	6,096.59
Trans. to Acct. No. 1		

CASE 3320.

KRIBS' BANK ACCOUNT.

Checks.
1901.

Jan.	2.	$ 70.00	Mar.	20.	$ 5.50		
"	"	3.00	"	21.	1,000.00		
"	"	170.00	"	"	100.00		
"	5.	3.00	"	"	150.00		
"	"	1.00	"	"	200.00		
"	9.	20.00	"	"	700.00		
"	"	5.00	"	"	1,002.00		
"	"	15.00	"	"	1,236.41		
"	18.	4,000.00	"	"	73.00		
"	"	500.00	"	23.	67.50		
"	29.	100.00	"	"	5.00		
"	"	6.00	"	25.	1.00		
"	30.	125.00	"	"	319.62		
"	30.	7.90	"	"	1,278.48		
Feb.	1.	2,540.00	"	26.	3.00		
"	2.	4.00	"	27.	1.50		
"	6.	1.00	"	29.	3.00		
"	12.	800.00	"	"	1,060.00		
"	"	785.00	Apr.	1.	12.60		
"	"	640.00	"	5.	3,045.05		
"	"	200.00	"	6.	528.18–Toussant.		
"	"	100.00	"	8.	2,048.93–Deeds.		
"	"	2,282.00	"	9.	200.00		
"	"	35.00	"	16.	2.00		
"	"	1,600.00	"	17.	2,496.00–Scrip.		
"	"	1.50	"	"	233.47–Cushaw.		
"	"	18.78	"	"	164.60		
Mch.	8.	400.00	"	"	500.00		
"	"	4,000.00	"	18.	169.00		
"	9.	922.00	"	"	45.00		
"	"	100.00	"	"	1,023.53		
"	11.	316.00	"	19.	584.00–Paid Ferrigan.		
"	12.	125.00	"	20.	20.44		
"	13.	410.45	"	"	1,270.00–Sheriff.		
"	14.	526.00	"	22.	37.50		
"	"	1,798.95	"	"	2.90		
"	15.	100.00	"	24.	25.00		
"	16.	250.00	"	26.	20.00		
"	16.	150.00	"	"	640.00		
"	"	50.00	"	30.	80.00		
"	"	375.00	May	2.	1.25		
"	"	150.00	"	6.	111.03		
"	"	770.00	"	16.	4,257.00		
"	18.	100.00	"	28.	18.75		
"	"	1,605.00	June	11.	600.00		
"	"	50.00	"	28.	415.23–Smith.		
"	"	378.00	"	29.	25.00–Taxes.		
"	"	2,054.44	July	1.	125.00–Smith.		
"	19.	600.00	"	2.	75.00		
"	"	1,103.85	"	10.	150.00		
"	"	100.00	"	11.	25.00		
"	20.	200.00	"	15.	150.00		

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

Deposits.		
1901.		
Jan.	21.	$12,000.00
Mch.	9.	15,000.00
"	21.	6,096.59
Apr.	11.	10,000.00
"	26.	6,386.73
May	3.	116.73
"	17.	3,363.57
July	17.	3,000.00
Aug.	9.	15,000.00
Oct.	3.	450.00
"	8.	7,000.00
"	24.	11,000.00
"	26.	4,500.00
Nov.	18.	5,000.00
Dec.	9.	9,500.00
"	10.	4,819.25
"	16.	200.00
"	19.	814.50
1902.		
Mch.	7.	86,550.00
"	17.	5,000.00
"	31.	61.82
Apr.	11.	1,364.75
"	16.	200.00
"	26.	2,265.65
May	19.	2,000.00
July	12.	4,000.00
Sep.	19.	1,800.00
"	24.	1,823.37
Oct.	14.	7,500.00
Nov.	26.	3,500.00
Dec.	31.	12,000.00
1903.		
Jan.	5.	30.00
"	16.	7,842.89
Mar.	27.	6,000.00
Apr.	27.	5,000.00
June	22.	6,000.00
July	8.	9,600.00
"	13.	37,000.00
Aug.	15.	307.66
"	17.	10,000.00
1904.		
Jan.	9.	10,000.00
Mch.	22.	1,500.00
Apr.	20.	8,489.74
"	28.	10,000.00

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

Checks.
1901.

July	15.	$ 25.00	Sept.	3.	$ 110.00	Oct.	18.	$ 150.00
"	1.	1,100.00	"	14.	200.00	"	"	19.70
"	"	25.00	"	17.	200.00	"	"	280.00
"	16.	50.00	"	"	200.00	"	"	500.00
"	17.	5.00	"	"	200.00	"	"	150.00
"	18.	25.00	"	"	200.00	"	21.	899.00
"	"	5.00	"	21.	75.00	"	"	30.00
"	"	7.00	"	"	50.00	"	"	200.00
"	19.	150.00	"	"	150.00	"	"	30.00
"	"	100.00	"	"	710.00	"	"	1,486.66
"	"	20.00	"	"	200.00	"	"	100.00
"	20.	310.00	"	"	20.00	"	23.	100.00
"	"	1,673.00	"	28.	250.00	"	25.	7,830.00
"	22.	55.60	"	30.	350.00	"	"	138.75
"	"	30.00	Oct.	1.	50.00	"	26.	200.00
"	24.	195.00	"	3.	450.00	"	"	3,990.00
"	25.	4.00	"	"	2.00	"	"	500.00
"	26.	42.00	"	"	100.00	"	28.	487.00
"	27.	500.00	"	5.	30.00	"	28.	6.00
"	"	250.00	"	"	35.00	"	"	3.50
"	29.	411.16	"	"	136.00	"	"	1.00
"	"	230.00	"	7.	25.00	"	"	40.00
"	"	75.00	"	"	410.00	"	"	80.75
"	30.	3.75	"	"	2.00	"	"	1.25
Aug.	1.	6.00	"	8.	65.00	"	"	150.00
"	"	3.00	"	"	1,143.10	"	29.	1.00
"	2.	175.00	"	9.	35.00	"	30.	150.00
"	2.	75.00	"	"	25.00	Nov.	1.	150.00
"	"	150.00	"	"	34.00	"	4.	100.00
"	"	3.10	"	"	148.75	"	"	5.00
"	5.	250.00	"	"	400.00	"	5.	6.25
"	"	250.00	"	"	2,300.00	"	7.	4,240.00
"	7.	53.08	"	"	1,420.00	"	8.	7.28
"	"	150.00	"	11.	64.00	"	"	27.14
"	9.	8.00	"	"	783.00	"	14.	7.90
"	10.	1.00	"	12.	90.00	"	20.	20.00
"	12.	1.00	"	"	77.00	"	21.	575.00
"	15.	4.00	"	14.	50.00	"	25.	8,941.40
"	24.	10.00	"	"	700.00	"	"	3.00
"	26.	5.00	"	"	100.00	"	29.	10.00
"	27.	20.75	"	15.	25.00	Dec.	5.	150.00
"	"	50.00	"	"	3.00	"	13.	700.00
"	"	25.00	"	16.	186.35	"	16.	500.00
"	28.	1,334.00	"	"	600.00	"	17.	290.00
"	"	160.00	"	17.	200.00	"	18.	833.00
"	"	5.00	"	"	50.00	"	20.	2.50
"	29.	200.00	"	18.	167.00	"	21.	1,200.00
"	31.	801.00	"	"	400.00	"	24.	820.00
"	"	29.90	"	"	181.55	"	26.	9.20

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

Checks.
1902.

Jan.	22	$	690.00	Apr.	21.	$	150.00
"	30.		40.00	"	"		1,140.00
"	31.		40.00	"	24.		75.00
Feb.	1.		10.00–Thom.	"	28.		2.73
"	"		75.00	"	30.		1.00
"	3.		200.00	"	"		25.00
"	"		200.00	May	2.		38.50
"	"		200.00	"	"		150.00
"	5.		100.00–Cannon	"	5.		900.00–Von Pessoll.
"	7.		100.00	"	7.		100.00
"	"		25.00	"	"		243.00
"	"		25.00	"	10.		.75
"	"		25.00	"	"		.75
"	"		2.00	"	19.		300.00
"	10.		25.00	June	4.		300.00–McMullen.
"	"		2.00	"	16.		6.75
"	14.		500.00	"	16.		1,000.00
"	17.		95.00	"	20.		23.00
Mch.	1.		1,281.50	"	"		500.00
"	3.		25.00	"	"		89.30
"	"		79.50	"	30.		120.00
"	5.		10.00	July	1.		9.00
"	6.		150.00	"	"		43.93
"	"		18,000.00	"	"		49.23
"	7.		225.00	"	3.		155.00
"	"		67,700.00	"	"		5.00
"	8.		107.45	"	8.		310.00
"	"		25.00	"	14.		1.00
"	11.		25.00	"	14.		15.00
"	"		5.00	"	17.		900.00–Thom.
"	14.		25.00	Aug.	1.		4.36
"	15.		17.50	"	6.		262.00
"	"		309.73	"	"		106.50
"	17.		4.00	"	"		312.00
"	20.		600.00	"	9.		50.00
"	22.		1,650.00–T. R. S.	"	11.		5.00
"	25.		1,342.05	"	13.		28.00
"	26.		6.00	"	15.		544.00
"	29.		750.00–Thom.	"	16.		100.00
"	31.		1.25–See.	"	18.		2.00
Apr.	7.		800.00–Diller.	"	28.		300.00
"	10.		8.89	"	28.		384.65
"	11.		1.00	Sept.	6.		100.00
"	15.		3,000.00	"	"		91.50
"	"		72.50	"	"		300.00
"	16.		1.25	"	"		24.00
"	"		460.00	"	8.		6.15
"	17.		1,020.70	"	"		100.00
"	"		25.00	"	"		151.65
"	18.		6.25	"	"		60.00
"	"		15.00	"	9.		100.00

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

Checks.
1902.

Sep.	10.	$ 30.00		Dec.	27.	$ 1,000.00	
"	11.	75.00		"	"	400.00	
"	"	50.00		"	29.	30.00	
"	198.	100.00					
"	22.	500.00					
"	23.	5.00					
"	"	830.00					
"	25.	50.00					
"	"	410.00					
"	"	240.00					
"	27.	250.00					
"	29.	1.00					
"	"	1.00					
"	"	50.00					
"	"	800.00–Error.					
Oct.	4.	350.00					
"	7.	1.00					
"	11.	70.00					
"	13.	4.25					
"	18.	685.00					
"	20.	200.00					
"	"	600.00					
"	21.	772.04					
"	22.	632.54					
"	"	632.54					
"	"	600.00					
"	"	300.00					
"	28.	1,010.00–Thompson.					
"	"	790.00–Arant.					
"	"	60.00–Thom.					
Nov.	1.	650.00					
"	5.	2,880.00–Welch.					
"	"	860.00–Thompson.					
"	"	1.00					
"	7.	1.00					
"	12.	400.00–Thompson.					
"	14.	383.00					
"	"	1.22					
"	18.	1,979.20–Hacker.					
"	28.	9.72					
"	29.	1,550.00–Given.					
Dec.	13.	500.00–B. McM					
"	24.	550.00–Thompson.					
"	"	1,800.00					

SOURCES OF DEPOSITS OF FRED A. KRIBS IN FIRST NATIONAL BANK OF ROSEBURG FOR 1901.

To First National Bank of Portland, January 21, 1901; dated January 21, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by "us"; amount $12,000.

To First National Bank of Portland, March 9, 1901; dated March 9, 1901; drawn by Fred A. Kribs on C. A. Smith Lumber Company; endorsed by us; amount $15,000.

To First National Bank of Portland, April, 1901; dated April 8, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $10,000.

To First National Bank of Portland, April, 26, 1901; dated April 24, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by T. R. Sheridan; amount $1,386.73.

To First National Bank, Portland, April 26, 1901; dated April 24, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by T. R. Sheridan; amount $5,000.

To First National Bank, Portland, May 17, 1901; dated May 13, 1901; No. 1185; drawn by Charles A. Pillsbury & Co. on First National Bank of Minneapolis; endorsed by Fred A. Kribs; amount $3,363.57.

To First National Bank of Portland, July 17, 1901; dated July 17, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $3,000.

To National Park Bank of New York, August 9, 1901; dated ———; No. 10505; drawn by Pillsbury-Washburn Flour Milling Co.; on Chase National Bank of New York; endorsed by Fred A. Kribs; amount $10,000.

To First National Bank of Portland, August 9, 1901; dated July 25, 1901; drawn by J. S. Pillsbury; on First National Bank of Minneapolis; endorsed by Fred A. Kribs; amount $5,000.

To C. W. National Bank, San Francisco, October 3, 1901; dated October 2, 1901; No. 690; drawn by Fred A. Kribs; on National Bank of D. O. Mills; endorsed by us; amount $450.

To C. W. National Bank, San Francisco, Calif., October 8, 1901; dated October 8, 1901; No. 691; drawn by F. A. Kribs; on National Bank D. O. Mills; endorsed by us; amount $7,000.

To First National Bank of Portland, October 24, 1901; dated October 24, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $11,000.

To First National Bank of Portland, October 26, 1901; dated October 26, 1901; drawn by F. A. Kribs on C. A. Smith Lumber Company; endorsed by us; amount $4,500.

To First National Bank of Portland, November 16, 1901; dated November 11, 1901; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $5,000.

To First National Bank of Portland, December 9, 1901; dated December 4, 1901; No. 1711; drawn by C. A. Smith Lumber Company on National Bank of Republic; endorsed by T. R. Sheridan; amount $9,500.

To First National Bank of Portland, December 10, 1901; dated December 6, 1901; No. 1716; drawn by C. A. Smith Lumber Company on National Bank of Republic of Chicago; endorsed by T. R. Sheridan; amount $4,819.25.

Deposit slip of March 21, 1901, shows deposit of $6,096.59 by check on Kribs account No. 2, First National of Roseburg. **[1230]**

CASES 3319–3320.

SOURCES OF KRIBS' DEPOSITS—PAGE "

Deposit slip of May 3, 1901, shows deposit through Ben McMullen, one-half $233 on Wilson deal.

Deposit slip of December 16, 1901, shows "returned by Lebruher" $200.

Deposit slip of December 19, 1901, shows returned on "Hoover and us claims" $814.50. **[1231]**

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

TRANSMITTAL SHEETS.

1900.

Account No. 1.

To National Park Bank of New York, New York, April 17, 1900; No. 15798, dated April 12, 1900; drawn by Swedish-National Bank of Minneapolis; on Mercantile National Bank, endorsed by Fred A. Kribs; amount $30,000.00.

To First National Bank of Portland, Oregon, April 30, 1900; No. ——, dated April 30, 1900; drawn by Fred A. Kribs on C. A. Smith Lumber Company; endorsed by "us," amount $5,000; "If not paid on presentation, have Bank wire us."

To First National Bank, Portland, Oregon, May 10, 1900; dated May 10, 1900; drawn by Fred A. Kribs on C. A. Smith Lumber Company of Minneapolis, Minn.; endorsed by "us"; amount $40,000.00; "No Pro." Wire if not paid.

To National Park Bank, New York, May 15, 1900; dated May 8, 1900; No. 15929; drawn by Swedish-American Bank of Minneapolis on Mercantile National Bank of New York; endorsed by F. A. Kribs; amount $20,000.00.

To First National Bank Portland, May 23, 1900; dated May 12, 1900; drawn by Fred A. Kribs on C. A. Smith Lumber Company; endorsed by "us"; amount $20,000.

To First National Bank of Portland, July 11, 1900; dated July 11, 1900; drawn by F. A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by "us"; amount $10,000.

To First National Bank of Portland, July 24, 1900; dated July 23, 1900; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by "us"; amount $30,000.00.

To First National Bank Portland, August 21, 1900; dated August 31, 1900; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by "us"; amount $15,000.00.

To Ladd & Bush, Salem, Oregon, August 8, 1900; dated August 8, 1900; No. 1287; drawn by C. A. Smith Lumber Company; on National Bank of Republic, Chicago; endorsed by F. A. Kribs; amount $300.

To First National Bank of Portland, September 11, 1900; dated September 10, 1900; drawn by Fred

A. Kribs; on C. A. Smith Lumber Company of Minneapolis, Minn.; endorsed by "us"; amount $17,000.00.

To First National Bank of Portland, September 21, 1900; dated September 20, 1900; drawn by F. A. Kribs; on C. A. Smith Lumber Company; endorsed by "us"; amount $5,000.

To First National Bank of Portland, Oregon, October 8, 1900; dated October 4, 1900; No. 1315; drawn by C. A. Smith Lumber Company; on National Bank of Republic of Chicago; endorsed by "us"; amount $7,000.00.

To First National Bank of Portland, December 13, 1900; dated December 13, 1900; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by "us"; amount $10,000.

Deposit slip of July 11, 1900, shows deposit of currency $100.

Account No. 2. (1900.)

First National Bank of Portland, April 30, 1900; dated April 25, 1900; No. 9298; drawn by Pillsbury-Washburn Flour Mills; on Chase National Bank; endorsed by Fred A. Kribs; amount $45,000.00.

To First National Bank of Portland, May 17, 1900; dated May 10, 1900; No. 9361; drawn by Pillsbury-Washburn Flour Mills on Chase National Bank of New York; endorsed by F. A. Kribs; amount $30,000.00. **[1232]**

CASE 3320.

KRIBS' BANK ACCOUNT.

ROSEBURG.

REMITTANCE SHEETS ACCOUNT NO. 2—CONTINUED.

To National Park Bank, New York, January 21, 1901; dated December 26, 1900; No. 9869; drawn by Pillsbury-Washburn Co. on Chase National Bank; endorsed by F. A. Kribs; amount $15,000. **[1233]**

KRIBS' BANK ACCOUNT FOR 1902.

ROSEBURG, OREGON.

TRANSMITTAL SHEETS.

SOURCE OF DEPOSITS.

Letter of First National Bank of Portland, March 5, 1902, informs First National Bank of Roseburg, that $86,550 has been deposited to its credit by Fred A. Kribs.

Records First National Bank of Portland, shows that under date of March 5, 1902, First National Bank of Roseburg, deposited draft drawn by Fred A. Kribs on Alfred A. Pillsbury, for $16,800.

Also deposited by draft of same date drawn by Fred A Kribs on C. A. Smith Lumber Company for $69,750.

Letter of First National Bank of Portland, March 17, 1902, informs First National Bank of Roseburg, that $5,000 has been deposited to its credit by Fred A. Kribs.

Records First National Bank of Portland show that March 17, 1902, draft drawn by Fred A. Kribs

on C. A. Smith Lumber Company for $5,000.

National Park Bank New York April 11, 1902; dated March 20, 1902; No. 4492; drawn by Aitkin Co. Bank of Warroon *(?)*; endorsed by Fred A. Kribs; amount $348.

Same. No. 4493; amount $1,000.

To First National Bank of Eugene, April 16, 1902; dated April 12, 1902; drawn by H. G. McKinley; on "us"; endorsed by F. A. Kribs; amount $200.

To First National Bank of Portland, April 26, 1902; dated April 24 (1902); No. 34; drawn by Fred A. Kribs; on Merchants National Bank of Portland; endorsed by T. R. Sheridan; amount $2,265.66.

To First National Bank of Portland, August 12, 1902; dated August 12, 1902; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $4,000.00.

To First National Bank of Portland, September 19, 1902; dated September 18, (1902); drawn by Fred A. Kribs; on Merchants National Bank; endorsed by us; amount $1,800.00.

To First National Bank of Portland, September 24, 1902; dated September 23, (1902); drawn by Fred A. Kribs; on First National Bank of Minneapolis; endorsed by us; amount $1,823.37.

To First National Bank of Portland, October 13, 1902; dated October 8, (1902); No. 171; drawn by Charles A. Pillsbury; on First National Bank of Minneapolis; endorsed by F. A. Kribs; amount $7,500.00.

To First National Bank of Portland, November 26, 1902; dated November 21, (1902); No. 27 (1) 781;

drawn by (S. W.) Duluth; on them; endorsed by Fred A. Kribs; amount $3,500.

To First National Bank of Portland, December 21, 1902; dated December 30, (1902); drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $12,000.00

Deposit slip of March 3, 1902, shows $61.82, deposited by T. R. S. (evidently T. R. Sheridan) by check, on scrip deal.

Deposit slip of May 19, 1902, shows check credit of $3.000, by "Scrip returned." **[1234]**

KRIBS' BANK ACCOUNT.

ROSEBURG.

SOURCE OF DEPOSITS FOR 1903 & 1904.

1903.

To First National Bank of Portland, January 16, 1903; dated December 5, 1902; No. 44410; drawn by C. A. Smith Lumber Company on First National Bank of Minneapolis; endorsed by Fred A. Kribs; amount $7,986.69. *(?)*

To First National Bank of Portland, March 27, 1903; dated March 27, 1903; drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $6,000.00.

To First National Bank of Portland, May 4, 1903; dated May 1, 1903; drawn by F. A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $5,000.00.

To First National Bank of Portland, June 20, 1903; dated June 20, 1903; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $6,000.00.

To First National Bank of Portland, July 8, 1903; dated July 6, (1903); No. 84; drawn by George Mandig on First National Bank of Grand Rapids; endorsed by F. A. Kribs; amount $5,760.

To First National Bank of Portland, July 8, 1903; dated July 6, (1903); No.—— drawn by Chas. Gage; on First National Bank of Minneapolis; endorsed by F. A. Kribs; amount $3,840.00.

To First National Bank of Portland, July 11, 1903; dated July 11, (1903); drawn by Fred A. Kribs on Chas. A. Pillsbury of Minneapolis; endorsed by us; amount $3,200; (This draft seems not to have been deposited to Kribs' credit).

To First National Bank of Portland, July 13, 1903; dated July 11, 1903; drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $37,000.00.

To First National Bank of Portland, August 15, 1903; dated August 15, 1903; drawn by F. A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $10,000.00.

Deposit slip of January 9, 1903, shows deposit of $30.00 by check of T. R. S. (T. R. Sheridan.)

Deposit slip of August 14, 1903, shows deposit of $307.66, by check No. ..... No statement upon whom same was drawn.

1904.

To First National Bank of Portland, January 9, 1904; dated January 8, (1904); drawn by Fred A. Kribs; on C. A. Smith Lumber Company of Minneapolis; endorsed by us; amount $10.000.

To First National Bank of Portland, April 28,

1904, dated April 26, drawn by Fred A. Kribs; on C. A. Smith Lumber Company; endorsed by us; amount $10,880.00.

Nothing found as to deposit of $1,500 on March 28, 1904; $8,489.74. April 20, 1904. **[1235]**

CASE 3320.

EXTRACTS FROM ACCOUNT OF J. H. BOOTH, RECEIVER, WITH FIRST NATIONAL BANK OF ROSEBURG.

DEPOSITS.

1900.

April.	20–	$10,384.81
May.	17	6,381.76

Deposit slip of April 20, 1900, shows two items for $7,200 and 410.75, checks on First National Bank of Roseburg, identical sums checked by F. A. Kribs on said bank on said date. Desk book shows no other checks of like denomination paid on that date.

Deposit slip of May 17, 1900, shows one item by check on First National Bank of Roseburg for $8,962.60, sum identical with check of F. A. Kribs cashed on said date and desk book shows no other check of like denomination cashed on said date. **[1236]**

CASE 3319.

EXTRACTS FROM ACCOUNT OF J. H. BOOTH, RECEIVER, WITH FIRST NATIONAL BANK OF ROSEBURG.

DEPOSITS.

1900.

Aug.	18.	$1,935.40
Sep.	1.	6,676.86

Oct. 10. $4,155.68
" 17. 410.61

Deposit slip of August 17, 1900, shows check on First National Bank of Roseburg for $1,642.04, identical sum of check of F. A. Kribs cashed on said date.

Deposit slip of September 1, 1900, shows item of $3,696.46 by check on First National Bank of Roseburg, identical sum of check of F. A. Kribs on said bank cashed on that date.

Deposit slip of October 10, 1900, shows item of $4,155.68, identical sum checked by F. A. Kribs on First National of Roseburg on that date.

Deposit slip of October 17, 1900, shows single item of $410.61 by check, bank not named, same amount checked by F. A. Kribs on First National of Roseburg on that date. **[1237]**

CASE 3320.

ACCOUNT OF S. A. D. PUTER WITH FIRST NATIONAL BANK OF ROSEBURG.

Deposits.		Checks.	
1900.		1900.	
Apr. 19.	$4,000.00	Apr. 19.	$ 500.00
" 26.	849.25	" "	240.00
1901.		" "	100.00
Mch. 20.	200.00	" 20.	150.00
		" "	300.00
		" "	40.00
		" "	85.00
		" "	25.00
		" "	75.00
		" "	105.00
		" "	2,000.00
		" 21.	2.00
		" "	15.00
		" 23.	50.00
		May 1.	18.00
		" 4.	25.00
		" 12.	448.93
		June 13.	6.50
		July 2.	100.00
		Nov. 5.	35.00
		1901.	
		Mch. 20.	$ 200.00
		" 25.	209.00

SOURCES OF DEPOSITS OF S. A. D. PUTER
REMITTANCE SHEETS.

To First National Bank of Portland, April 19, 1900; dated April 12, 1900; No. 1514; drawn by cashier; on Wells-Fargo Bank—endorsed by S. A. D. Puter; amount $400.00.

To First National Bank of Portland; April 19, 1900; dated April 12, 1900; drawn by and on Wells-Fargo Bank of Portland; endorsed by S. A. D. Puter; amount $4,000.00. **[1238]**

U. S. Exhibit No. 191.

No. 3320.

(U. S. Internal
Revenue stamp)

FIRST NATIONAL BANK.

PAID.

May 17, 1900.

ROSEBURG, OREGON.

Roseburg, Oregon, May 16th, 1900. No. 13.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to Henry Booth, Receiver, or Order $5962 60/100, Five thousand, nine hundred sixty-two and 60/100 Dollars.

14–4 & 3 proofs. FRED A. KRIBS. #1
(In pencil)

(ENDORSED):
J. Henry Booth.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1241]**

U. S. Exhibit No. 192.

No. 3320.

(U. S. Internal
Revenue stamp)

FIRST NATIONAL BANK.
PAID.

Apr. 26, 1900.
ROSEBURG, OREGON.

Roseburg, Oregon April 25th, 1900. No. 4.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to S. A. D. Puter or Order, $7349.25, Seven Thousand three hundred forty nine and 25/100 Dollars.

FRED A. KRIBS. #1.

(ENDORSED):
S. A. D. Puter.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1242]**

U. S. Exhibit No. 193.

No. 3320.

(U. S. Internal
Revenue stamp)

PAID.
May 11, 1900.
ROSEBURG, OREGON.

Roseburg, Oregon, May 8th, 1900 No. 12.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to S. A. D. Puter, or Order, $3500.00, Thirty-five hundred and no/100 Dollars.

FRED A. KRIBS. #1.

(ENDORSED):

S. A. D. Puter.

Pay YOURSELVES or order,

WELLS FARGO & CO. BANK,

Portland, Oregon.

R. M. Dooly, Cashier.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1243]**

U. S. Exhibit No. 194.

No. 3320.

(U. S. Internal Revenue Stamp)

FIRST NATIONAL——

PAID.

May 16, 1900.

ROSEBURG, OREGON.

Roseburg, Oregon, May 16th, 1900. No. 14.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to S. A. D. Puter, or Order $1000.00, One Thousand and no/100 Dollars.

FRED A. KRIBS. #1.

(ENDORSED):

S. A. D. Puter.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1244]**

U. S. Exhibit No. 195.

No. 3320.

(U. S. Internal Revenue stamp)

FIRST NATIONAL BANK.

PAID.

May 23, 1900.

ROSEBURG, OREGON.

Roseburg, Oregon, May 22d, 1900. No. 15.

FIRST NATIONAL BANK OF ROSEBURG,

Pay to S. A. D. Puter, or Order $9000.00, Nine Thousand and no/100 Dollars.

FRED A. KRIBS. #1.

(ENDORSED):

S. A. D. Puter.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1245]**

Defendants' Exhibit "K."

No. 3320.

THIS AGREEMENT, Made this 8th day of February, A. D. 1900, between STEPHEN A. D. PUTER, Portland, Oregon, of the first part, and C. A. SMITH LUMBER COMPANY, a corporation, of the second part, WITNESSETH:

That in consideration of the covenants and agreements herein contained to be kept by the parties hereto, respectively, it is agreed as follows:

(1) That the first party hereby gives unto the second party the exclusive option until the thirteenth day of June, 1900, to buy all of the lands and timber mentioned on pages 1 to 16 of Schedule "A" hereto attached and made a part hereof, at the agreed price of five and 37½/100 dollars ($5.37½) per acre, and agrees in case the second party exercises this option to convey, or cause to be conveyed, all of said lands and timber, free and clear of encumbrance, by satisfactory conveyance to the second party, upon being paid the said sum.

(2) The first party guarantees that all the representations contained in the said schedules are true.

(3) The second party shall proceed to examine the said timber lands, and it agrees, if upon such

examination it finds that the representations contained in said schedules are true, to purchase the said timber lands within the time mentioned and pay the said sum of five and 37½/100 dollars ($5.37½) per acre therefor. The said consideration is to be paid as follows: The first party shall, before the first day of March, 1900, make a preliminary examination of said lands and may then, if in its judgment it considers the prospective purchase worthy of a more thorough investigation, pay to George Baldwin, of Appleton, Wisconsin, the sum of fifteen thousand dollars ($15,000) and upon doing so shall receive from the said George Baldwin the original certificates issued by **[1246]** the State of Oregon on the said lands and also assignments thereof, making a good chain of title in the C. A. Smith Lumber Company. The balance of the purchase price, if the second party elects to carry out this option and buy the lands, shall be paid in cash on or before the 13th day of June, 1900. Out of the amount then due to complete this purchase shall be deducted all amounts due to the State of Oregon on the said original land certificates, and the second party will pay the said amounts so due the State, as part of the purchase price for said lands.

(4) It is understood and agreed by both parties that until the second party elects to take said lands and complete this purchase that it shall hold the said land certificates as security for the payment of the fifteen thousand dollars ($15,000) paid out to Mr. Baldwin, as aforesaid. That the assignments of said certificates to C. A. Smith Lumber Company shall, if the Smith Lumber Company pays the bal-

ance of the purchase money as aforesaid, thereupon become absolute and convey full title to said certificates and the lands therein mentioned and no longer be in the nature of a security. And it is further agreed that in case the second party does not elect to take said lands, the first party shall, within sixty days after receiving notice in writing by mail, that the second party does not intend to buy said lands, pay to the second party the sum of fifteen thousand dollars ($15,000) paid out by it as aforesaid, with interest thereon at eight per cent (8%) per annum, from March 1st, 1900, together with the expenses mentioned below, and upon being paid the said sum and necessary expenses, the second party agrees to surrender to the first party the original certificates and all papers connected therewith.

(5) It is mutually understood and agreed that in case the second party, upon examination of said lands, is not satisfied with **[1247]** the harbor facilities to which said timber is tributary, or if it shall find that the streams referred to in said schedules cannot be satisfactorily used for driving said timber, or the representations contained in said schedules are not true, then in either of said cases it shall not be bound to purchase the said timber.

(6) It is further understood and agreed that if after making the complete examination of said lands the representations contained in Schedule "A" hereto attached are found by the second party not to be true that the first party will pay to the second party all reasonable and necessary expenses incurred by it in making the examination.

(7) This contract shall extend to and be binding

on the heirs and legal representatives of the first party and upon the successors of the second party.

IN WITNESS WHEREOF, The first party has hereunto set his hand and seal and the second party has hereunto caused its name to be subscribed by its president the day and year first above written.

S. A. D. PUTER. [Seal]

C. A. SMITH LUMBER COMPANY.

By C. A. SMITH,

Its President.

Signed, sealed and delivered in presence of

W. G. BOHN.

FRED B. SNYDER.

Filed May 10, 1910. G. H. Marsh, Clerk. **[1248]**

Defendants' Exhibit "M."

~~Copy taken from Book #1, Page 484.~~

March 5, 1900.

Mr. A. D. Puter,

Portland, Ore.

Dear Sir:—

We received advice from our Mr. Rogers and also from Mr. Kribbs that between you you had concluded that it was a physical impossibility to go into the lands on Coos and Coqueville rivers, and get back to the railroad in time to wire us before the 1st of March. Mr. Kribbs wrote that you intended to secure if possible an extension of the time from Mr. Bladwin. Have heard nothing either from you or Mr. Kribbs whether such an extension of time was secured or not. We would be pleased to hear whether you desire us to go ahead and figure on this

land or not. Awaiting your early answer, we remain,

Yours truly,
C. A. SMITH LUMBER CO.,
C. A. SMITH,
Prest.

[1249]

And, to wit, on the 1st day of July, 1910, there was duly filed in said court, Testimony and Exhibits taken before George F. Hitchcock, Special Examiner, in words and figures as follows, to wit:

[1250]

[Testimony and Exhibits Taken and Introduced Before the Special Examiner.]

(Title of Court and Cause.)

Depositions of witnesses taken on behalf of the defendants in the above-entitled cause, before Geo. F. Hitchcock, Jr., Special Examiner, pursuant to the order hereto attached, beginning on the 9th day of June, 1910, and concluded on the 10th day of June, 1910, Mr. John McCourt, U. S. Attorney appearing on behalf of the complainant, and Messrs. Lind & Ueland on behalf of the defendants. Thereupon the following proceedings were had:

It is stipulated by and between the attorneys for the respective parties that the testimony taken in the above-entitled cause shall stand as the testimony taken in and apply in case No. 3319 so far as applicable. [1251]

[Testimony of Mrs. Ethel Steele, for Defendants.]

Mrs. ETHEL STEELE, a witness produced on behalf of the defendants, after being first duly sworn, testified as follows in answer to questions by Mr. Ueland:

Q. Your name is Mrs. Ethel Steele, is it not?

A. Yes, sir.

Q. Where do you reside, Mrs. Steele?

A. No. 11 South 12th street.

Q. In what city?

A. Minneapolis, Minnesota.

Q. How long have you lived here in Minneapolis?

A. Since 1888.

Q. What occupation have you, if any?

A. I am employed as a clerk for the C. A. Smith Timber Company.

Q. How long have you been so employed, Mrs. Steele? A. Nearly ten years.

Q. Continuously? A. Yes.

Q. Where in this city is the office of the C. A. Smith Timber Company?

A. It is located at #411 Andrus Building.

Q. And about how long has the office been at that place?

A. I think it is about six years. Between five and six years.

Q. While employed in that office state whether or not you have done any stenographic and typewriting work.

A. Yes, I have done considerable of it.

Q. Is that office one or a suite of several rooms?

A. A suite of four rooms.

(Testimony of Mrs. Ethel Steele.)

Q. In which of those four *room* are you when at work?

A. In the main room; the first that you enter.

Q. Is that an ante-room to the other rooms?

A. Yes. **[1252]**

Q. That is, coming into this suite of offices every one comes first into the room where you are occupied? A. Yes.

Q. And from that room into the other rooms?

A. Yes.

Q. Does Mr. C. A. Smith occupy one of those four rooms as a private room? A. Yes.

Q. And has during the time you refer to?

A. Yes, sir.

Q. Is that an inner room; one of those inner rooms? A. Yes, sir.

Q. And does Charles L. Trabert occupy another of those inner rooms? A. Yes, sir, he does.

Q. While employed as you have stated state whether you have occasionally been called upon to witness documents executed by Mr. Smith?

A. Yes, I have been very frequently.

Q. Frequently? A. Yes.

Q. (Showing witness paper.) Mrs. Steele, I show you a document that is marked U. S. Exhibit 155; look it all over, including the signatures; I also show you a document that is marked "Defense Exhibit 'C' for Identification." Look that all over, please; I also show you a document marked "Defense Exhibit 'D' for Identication. Have you seen those three documents before? A. Yes, sir, I have.

Q. Do you know who prepared those documents;

(Testimony of Mrs. Ethel Steele.)

that is the typewriting?

A. The typewriting I did myself.

Q. Mrs. Steele, I call your attention to certain figures in pencil on U. S. Exhibit 155, "41,967.40 acres," and under that, "80,000" in figures.

A. Yes.

Q. And I call your attention also to pencil marks at the top **[1253]** of "Defense Exhibit 'C' for Identification," "7,440 acres," and underneath that in figures "15,000." And I call your attention also to figures in pencil at the top of "Defense Exhibit 'D' for Identification," "3,371.28 acres," and underneath, "5,000" in figures. A. Yes.

Q. Do you know who made those pencil figures?

A. I made them myself.

Q. And when did you make those pencil figures with reference to the time the typewriting was done?

A. I made out the bodies and we left the place for the consideration blank; then we figured the acreage in each deed to estimate the consideration.

Q. When you say "we," who do you mean by "we"?

A. Well, I counted up the acres, and Mr. Trabert named the consideration for that number of acres.

Q. For each deed? A. Yes.

Q. So the figures I have read in each deed which we find in pencil under the figures denoting the acreage, signify, then, if I understand you right, the consideration to be put into the deed?

A. Yes. I made the notation on each deed so that I would not make any mistake in putting it in

(Testimony of Mrs. Ethel Steele.)

on the typewriter.

Q. You made those notations, then, before you put in the consideration in the body of the deed in typewriting? A. Yes.

Q. Do you now recognize the figures in pencil as being in your own handwriting?

A. Yes, sir.

Q. Upon each instrument? A. Yes, sir.

Q. Mrs. Steele, what is your recollection as to the time when this was done with reference to the dates that we find in typewriting [1254] in these deeds, namely, June 4, 1906?

A. Why, I am positive it was in that year, on account of the plans I made for a vacation at that time. That brings it fresh to my memory when it was.

Q. I call your attention to the name "Ethel Steele," as a witness on each of these three documents; is that in your handwriting? A. It is.

Q. Mrs. Steele, can you remember the specific occurrence when you witnessed the execution of these three deeds; can you remember where you were, and remember seeing Mr. and Mrs. Smith sign?

A. I can't remember, more than I know I was in the office. I have never signed any papers outside of the office.

Q. But you cannot remember specifically the occurrence of seeing them signed?

A. I can't remember which room I was in, no.

Q. Mrs. Steele, did you have a vacation in the year 1906? A. Yes, sir.

(Testimony of Mrs. Ethel Steele.)

Q. Can you remember whether these deeds were executed before or after that vacation?

A. They were executed before.

Q. Have you anything by which you can fix the time of that vacation? A. Yes, I have.

Q. Have you anything with you?

A. I have a canceled check with me that I got cashed on that vacation.

Q. Where did you go on that vacation?

A. I went to Seattle.

Q. You went to Seattle, and in going on that vacation did you receive a check for use while on your vacation?

A. No, I got the check before I left the office, and took it along with me. **[1255]**

Q. You took it along with you? A. Yes.

Q. And where did you cash that check?

A. At the Rainier Grand Hotel.

Q. In Seattle? A. Yes.

Q. And have you that check here?

A. Yes, I have.

Q. Will you produce it?

A. (Producing paper which is marked Defendants' Exhibit "M.")

Mr. UELAND.—I offer it in evidence. It is only offered for the purpose of fixing the time, in connection with her testimony. The offer includes the endorsement on the back showing that she drew the money.

Mr. McCOURT.—The check is objected to as immaterial.

Q. And as I understand you, you do remember

(Testimony of Mrs. Ethel Steele.)

so that you can testify that the deeds were executed before you started on the vacation on which you got that check to take along? A. Yes.

Q. This check appears to be dated July 31st, 1906? A. Yes.

Q. And is that about the time you started on that vacation?

A. I am positive that is the day I started.

Q. You are positive that is the day you started?

A. It was within a day or two any way.

Cross-examination.

(By Mr. McCOURT.)

Q. Do you execute, or rather make out a great many deeds, Mrs. Steele?

A. I make practically all the deeds.

Q. From dictation, or do you draft them yourself from forms in the office?

A. I usually put the descriptions on from [1256] checked plats.

Q. In this case you took the descriptions out of plats, did you, or were they given to you by Mr. Trabert?

A. I can't remember whether he gave me these descriptions. I know that I checked them on the plats before I made the deeds, because I always do. It is easier for me to read them.

Q. You say you have no recollection of the execution of those deeds so far as the deeds themselves are concerned?

A. I know that is my signature.

Q. Yes, from the fact that you see it on there?

A. Yes.

(Testimony of Mrs. Ethel Steele.)

Q. But the incident itself you don't recall?

A. I remember of witnessing the deeds.

Q. These particular deeds?

A. Well, I couldn't swear as to that, but I know I was there at the time, and I had been working on them; but there is no question in my mind but what that is my signature.

Q. No, I don't think there is any question about that at all.

A. No, sir. On the check you can see also.

Q. But what I am trying to get at, how is it that you can recall that the matter occurred before you went to Seattle, and still you don't have any recollection at all of the incident of signing the deeds as a witness, of seeing Mr. and Mrs. Smith sign them?

A. Because this work kept me. I had to postpone my vacation on account of this large amount of work.

Q. Well, these deeds were not completed on the 4th day of June then; it was sometime later?

A. It was during the month.

Q. During the month of June? A. Yes.

[1257]

Q. You left sometime early in July?

A. Yes.

Q. And you had worked on these deeds up to the time you left, or nearly so?

A. Most of the time. We had other work. I had to stay a little while afterward, because our work had piled up on account of having this extra.

Q. What time did you contemplate going if it hadn't been for this work?

(Testimony of Mrs. Ethel Steele.)

A. Why, somewhere along before the first of July.

Q. You didn't go then until after the first of July? A. No.

Q. So that the 4th day of June, upon which the deeds purport to have been executed, is not the correct date; it was sometime later than that; early in July probably?

A. I took a few days to make the deeds. Took several days to make them.

Q. Then, the date of the 4th of June, upon which Mr. Trabert signs his acknowledgement, would not have been the time then that he did actually acknowledge them; he must have acknowledged them some time later in the month, or early in July?

A. I could not tell as to the date that he made those deeds out.

Q. What did you do with the deeds when you had them completed; that is, when you completed the typewriting what did you then do?

A. Gave them to Mr. Trabert.

Q. Did you bind them up before you gave them to him? A. Yes, I bound them up.

Q. Then you had put in this consideration before you bound them up?

A. Yes, sir, before they were executed.

Q. As soon as you had them off the typewriter and got the **[1258]** consideration, found out what the consideration was, you placed it in the deed and bound it up with this cover; this is your binding?

A. Yes, sir.

Q. Who put on the endorsement? Did you en-

(Testimony of Mrs. Ethel Steele.)

dorse the deed there? *A* Is that your writing? (Showing witness paper.)

A. That is not my handwriting.

Q. I exhibited to you then "Defense Exhibit 'D' for Identification." I now exhibit to you Government Exhibit No. 59 in case No. 3319, and Government Exhibit No. 155 in case No. 3320, and ask you whether or not the handwriting in the endorsement on the cover of that deed is in your handwriting, especially the word "Linn"?

A. No, that is not mine.

Q. Do you know whose handwriting that is?

A. No, I don't.

Q. Now this deed appears to be press copied; did you press copy it? A. Yes, sir.

Q. What kind of record did you keep it in?

A. I don't know whether we saved the impression copy or not.

Q. What was the purpose of the press copy?

A. Because the ribbon smeared on the paper.

Q. And when was that done with reference to the binding? A. It was done before I bound it.

Q. Just before you bound it? A. Yes.

Q. Now those signatures of Mr. Smith and Mrs. Smith appear to be press copied there, do they not? Look at that and see if it isn't? Examine it closely; it is, is it not?

A. It doesn't look to me as though it was.

Q. You don't think it was press copied?

A. I don't think so. **[1259]** It doesn't look so to me.

(Testimony of Mrs. Ethel Steele.)

Q. So that you press copied these instruments before you bound them up, and then the signatures were put on afterwards?

A. Yes, sir, that is the way I think it is. I know that I copied them and bound them.

Q. Now, whose work is the acknowledgement of Mr. Trabert; that is the typewritten part?

A. That is mine.

Q. How was it that you didn't put that on the same kind of paper, or on the same kind of a machine; apparently you wrote that on a different ribbon?

A. I don't recall why. I don't recall the reason for it.

Q. Well, does it occur to you that this acknowledgement part of it was written a long time afterwards when you had changed ribbons on your machine?

A. We have three or four machines in the office.

Q. Do you use three or four yourself?

A. Yes.

Q. Why do you use three or four?

A. Well, we have a general machine up there that everyone uses, and one of the others might have been used at the time.

Q. Do you ordinarily make your deeds out on a copying ribbon? A. Yes.

Q. What is the reason for that? Why do you use it?

A. We have a rapid roller press in the office.

Q. What is that for?

A. To copy our letters, and of course we have a

(Testimony of Mrs. Ethel Steele.)

copying ribbon on the machine. On all the machines, and so when we make deeds I would frequently copy them because there is too much ink on them. **[1260]**

Q. Then, if you made them on a record ribbon there would not be so much ink on them, would there?

A. I know, but I use the same machine for writing letters occasionally.

Q. You don't know how Mr. Trabert figured the consideration in these deeds?

A. No, I don't know anything about that.

Q. Or whether it was just an arbitrary consideration placed in there, without any—

A. I haven't any knowledge of that.

Q. (Showing witness paper.) I wish you would examine Defendants' Exhibit "C" there and state whether the typewriting in the acknowledgement in that is not in the same typewriting as the body of the deed, and also whether or not the signature of Charles L. Trabert was not press copied in that one as well as the signatures of C. A. Smith and wife.

A. Because this is a carbon copy.

Q. This is a carbon copy? A. Yes.

Q. Has the acknowledgement, the typewriting in the acknowledgement been copied?

A. This acknowledgement?

Q. Yes. A. No.

Q. The typewriting itself? A. No.

Q. Has the deed been copied?

A. Yes, I think that deed is copied.

Q. It is not a carbon copy?

(Testimony of Mrs. Ethel Steele.)

A. No, the deed is not. The deed is an original. The acknowledgement is a carbon copy.

Q. And never press copied?

A. The acknowledgement, no.

Q. (Showing witness paper.) Now examine Defendants' Exhibit "D" for the same purpose, noticing the acknowledgement and the **[1261]** balance of the deed; also the signature of Mr. Trabert, and the signature of the parties.

A. This appears to be the original of that carbon copy (referring to the acknowledgement in exhibit "C").

Q. As I understand you, the acknowledgement on one document is a carbon copy of the other?

A. Here is a little mistake here; you can see from that that it is the same.

Q. Yes, that appears to be. One appears to be a carbon copy of the other. State whether or not that acknowledgement there was press copied, the typewriting, or the signature either for that matter?

A. The typewriting looks as though it was.

Q. You think the signature was not?

A. No.

Q. I hand you Government's Exhibit 161, in case 3320, and Government's Exhibit 65 in case No. 3319, and ask you whether or not you drew or did the typewriting in that instrument?

Mr. UELAND.—I object to that as not cross-examination.

A. I don't think I did this one.

Q. Did you copy it?

A. No, I don't recall it. The type is identical

(Testimony of Mrs. Ethel Steele.)

with one machine we have in the office, but I don't think that I did it.

Q. The signatures upon that are copied, are they not?

A. It doesn't look to me like it was copied.

Q. Look at the acknowledgement there.

A. These signatures were not copied I don't think.

Q. Just the typewriting?

A. I couldn't say whether the typewriting is or not. It doesn't look as if it was. It looks rather like there was too much ink on it. **[1262]**

Q. Isn't that blur and spread there the evidence of having been copied, especially upon the line made by the typewriter?

A. That blur on the line is occasioned from the words on the other side of the paper. It strikes through.

Mr. UELAND.—It is understood that this is all under the same objection.

Mr. McCOURT.—Yes.

Q. Do you have any typewriters with record ribbons on them?

A. What do you call "record ribbons"?

Q. One not a copying ribbon.

A. We always use copying ribbons.

Q. In all your deeds? A. Yes.

Q. But you did have record ribbons in the office?

A. No—I didn't know what a record ribbon was.

Q. What you might call a fast ribbon; one that won't copy.

(Testimony of Mrs. Ethel Steele.)

A. No, we haven't any of those. We have never had any.

Q. I show you Government Exhibit 155, in case No. 3320, and I call your attention to the acknowledgement. A. Isn't that a copying ribbon?

Q. Well, that is what I am asking you. Isn't that a record ribbon?

A. No, that is a copying ribbon.

Q. You think that will copy?

A. (Illustrating.) You can see it there, that it is a copying ribbon. You can see from that.

Q. Has that ever been copied?

A. Why, I don't think it has. *I* doesn't look to me as though it had.

Q. It hasn't any blur on there, has it?

A. It hasn't as much ink on it, as on the purple.

[1263]

Q. The purple ribbon carries the greater amount of ink? A. Usually.

Q. (Showing witness paper.) Now, I will ask you whether or not you did the typewriting work in Government Exhibit 159?

Mr. UELAND.—This is also objected to as not proper cross-examination, irrelevant and immaterial.

A. I can't say positively. I think I made this, but I made it part on one machine and part on the other, or it might be that they had the stenographer copy part of it.

Q. Well, has that never been copied?

A. I say copied from mine.

Q. I understand, but has it ever been copied in

(Testimony of Mrs. Ethel Steele.)

the rapid roller that you speak of; a press copy?

A. I don't think so.

Q. Well, that is a copying ribbon, is it not?

A. Yes, that is a copying ribbon all right. It don't look to me like it had been copied.

Q. I also show you now Government Exhibit 160, case 3320, and No. 64 in case 3319, and I will ask you to state whether or not you did the typewriting on that instrument?

Mr. UELAND.—The same objection.

A. I don't think I did this typewriting.

Q. Was it done in the office there?

A. The type is just like one of our machines.

Q. I will ask you the same question in regard to that. (Showing witness Government Exhibit 159 in case 3320.)

Mr. UELAND.—The same objection.

A. I couldn't say whether I did this or not.

[1264]

Q. Was it done in the office there?

A. I think I was away at that time.

Q. Has that been press copied and is it a copying ribbon?

A. It is a copying ribbon I think. I don't know whether it has been press copied or not.

Q. You think you were away when—

A. I believe I was away the date of that deed.

Q. The 10th of August, 1907? A. Yes.

Q. There is nothing to indicate on the deed though when the typewriting was done.

A. I suppose not.

Q. Wasn't that 1906 formerly, under the figure

(Testimony of Mrs. Ethel Steele.)

"7" there that has been put in—

A. I don't know as to that.

Q. There has been something under that there?

A. I don't know as to that.

Q. I will ask you to examine the acknowledgement on that instrument, Government Exhibit 159, and see if you can tell whether or not that was a "6" under the figure "7" (showing witness paper).

A. No, I couldn't tell.

Q. There is something else there; there is some other figure under it there?

A. There seems to be something.

Q. Are you able to give any reason why Government Exhibits 160 and 159 were not press copied, as well as Government Exhibit No. 155 and Defendants' Exhibit 'C' and 'D' for Identification?

Mr. UELAND.—The same objection.

A. Why, I suppose that is the way I have of doing, probably. Probably the other stenographer didn't do that. **[1265]**

Q. You merely run it through and them you threw away the copy?

A. Sometimes I'd throw them away, and sometimes I keep them in my desk.

Q. Have you any recollection of destroying those? A. No.

Q. May they not be in the records of your office; in your files?

A. They might be in the office now.

Q. Have you ever looked for them? A. No.

Q. What did you do with those copies when you made them; that you made upon this machine?

(Testimony of Mrs. Ethel Steele.)

A. Sometimes I threw them away, and sometimes I keep them in my desk in case I would want to make a duplicate.

Q. What did you have that in the office for?

A. This machine?

Q. Yes. What use did you make of it?

A. Copying letters.

Q. And the letters that are copied; how do you keep them?

A. We file those away with the letters that we get. We answer them, and then pin these copies to the letters that we receive and file them away in our files. We have a vertical filing system.

Q. Is this tissue paper, the copying paper that is on this machine, perforated so that you can cut it off, or does it form a roll that you make and file itself?

A. It makes a kind of a big roll underneath the machine, and we cut it off.

Q. Cut them off as you make a record of them?

A. Yes.

Q. And file them in their proper places?

A. Yes.

Q. But where would you file copies of these things?

A. I would not have any place for those. **[1266]**

Q. You have no file in your office for those?

A. I generally keep them in my desk. I have never been instructed to copy anything like that. I do it because the ribbon makes a blot on the paper. It is purely a notion on my own part.

Q. A matter of your own? A. Yes.

(Testimony of Mrs. Ethel Steele.)

Q. The body of these deeds that you drew here, where did you get that; do you know; do you recall that?

Mr. UELAND.—You mean the form?

Q. Yes, the form of the deed, outside of the description itself; do you recall how you got that at that time?

A. No, I can't remember whether it was dictated or whether I took it from the regular form.

Q. Somebody gave you instructions about making these; who did that? A. Mr. Trabert.

Q. (Showing witness paper.) I call your attention to exhibit 155 again; do you know who wrote "Linn County" on there?

A. That looks very much like my writing. I think it is.

Q. Do you know when you wrote that on there with reference to when it was bound up?

A. No, I could not remember that.

Q. Do you know whether you wrote that on there before you copied it or afterwards? A. No.

Q. What? A. I don't know. **[1267]**

[Testimony of Charles L. Trabert, for Defendants.]

CHARLES L. TRABERT, a witness produced on behalf of the defendants, after being first duly sworn testified as follows in answer to questions by Mr. Ueland:

Q. Your name is Charles L. Trabert?

A. Yes, sir.

Q. How old a man are you? A. 39.

Q. And where do you live?

(Testimony of Charles L. Trabert.)

A. 3901, Lyndale Avenue North, Minneapolis.

Q. How long have you lived in this city?

A. 27 years.

Q. Continuously? A. Yes.

Q. What is your occupation or business, Mr. Trabert, at this time?

A. I am Secretary of the C. A. Smith Timber Company.

Q. How long have you held that position?

A. Since 1904.

Q. Were you previous to 1904 connected with any business of C. A. Smith, or with any company of Mr. C. A. Smith? A. I have been for 17 years.

Q. And is that during the 17 years last past?

A. Continuously, the last 17 years.

Q. Connected with his business, or the business of one or another of his companies?

A. Yes, sir.

Q. Where was the office of the C. A. Smith Timber Company—is that the company of which you are Secretary? A. Yes.

Q. Where was the office of that company in 1906?

A. In the Andrus Building. 411, Andrus Building, Minneapolis.

Q. Mr. Trabert, was your attention in May 1906, called to the fact that a corporation named the Linn & Lane Timber Company was organized?

A. Yes, sir.

Q. Was your attention called to that at the time of **[1268]** its organization? A. Yes, sir.

Q. Do you know with what legal assistance that company was organized?

(Testimony of Charles L. Trabert.)

A. Governor Lind was our counsel I think in the organization of that company.

Q. Do you remember, Mr. Trabert, that in the month of May or early in June, 1906, there came to the office of the C. A. Smith Timber Company any papers connected with the incorporation of the Linn & Lane Timber Company? A. Yes.

Q. (Showing witness paper.) I show you a file envelope upon which is written the words "Linn & Lane Timber Company." Have you seen that before? A. Yes, sir.

Q. Do you know where that came from?

A. From the office of Lind & Ueland.

Q. And did any documents come in that envelope?

A. The documents connected with the organization of the corporation.

Q. Did those documents remain in that envelope?

A. They did.

Q. And where was the envelope and those documents kept from the time they were received?

A. Kept in a drawer in our vault that I have labeled "Corporation papers," in which we keep papers connected with all of our corporations.

Q. Up to what time was that envelope and the papers in it so kept at that place?

A. Until turned over to Lind & Ueland, approximately two years ago. I can't state the time.

Q. Was that about the time of the commencement of these suits? A. That was the time.

Q. (Showing witness paper.) I show you what purports to be a [1269] receipt of the State

(Testimony of Charles L. Trabert.)

Treasurer of this State for the incorporation fee of that company, dated May 24th, 1906; was that kept there in that envelope with those papers?

A. Yes, sir.

(The paper shown witness was marked Defendants' Exhibit "N.")

Mr. UELAND.—Exhibit "N" is offered in evidence.

Q. (Showing witness paper.) I show you the original articles of incorporation, which I do not care to mark, as they are already in the record in this case, or a copy of them; was that kept in that envelope with those papers as you have stated?

A. Yes, sir.

Q. (Showing witness papers.) I show you certificate of incorporation, under the hand and seal of the Secretary of State of the State of Minnesota, dated May 31st, 1906, and which will be marked Defendant's Exhibit "O"; was that when received put in that envelope and kept with those papers?

A. Yes, sir.

Mr. UELAND.—It is offered in evidence.

Mr. McCOURT.—It is objected to as immaterial.

Q. (Showing witness paper.) I show you a certificate of the Secretary of State of the State of Oregon, dated June 25th, 1906, which the examiner may mark Defendants' Exhibit "P"; was that kept in that envelope with those papers? A. Yes, sir.

Mr. UELAND.—I offer that in evidence.

Q. Mr. Trabert, do you recall a meeting at the office of the C. A. Smith Timber Company, 411 Andrus Building, held by Mr. C. A. Smith, Mrs. Smith

(Testimony of Charles L. Trabert.)

and John Lind, in June, 1906? A. I do.

Q. You knew of such a meeting being held there at that time? A. Yes, sir. **[1270]**

Q. (Showing witness papers.) I show you United States Exhibit 155, Defendants' Exhibit "C" and Defendants' Exhibit "D"; have you seen those documents before? A. Yes, sir.

Q. Are those three deeds signed by you as a witness? A. Yes, sir.

Q. And are you the Trabert who has signed the notarial certificate on each of them?

A. Yes, sir.

Q. Did you see Mr. and Mrs. Smith sign those documents? A. Yes, sir.

Q. Were those documents executed at the time they purport to be executed? A. Yes, sir.

Q. Were they executed before the time of that meeting I refer to, which appears in evidence to have been held June 9th, 1906? A. They were.

Q. After those documents were executed where were they kept; what was done with them?

A. In the corporation envelope—now, wait a minute; I catch your question; between the time of the execution and that meeting they were kept on my desk.

Q. Between the time of the execution and that meeting, they were kept on your desk?

A. That is my recollection.

Q. And where were they kept after that meeting?

A. In the corporation envelope.

Q. The same envelope that you have referred to?

(Testimony of Charles L. Trabert.)

A. Yes, sir.

Q. With the other documents? A. Yes, sir.

Q. You heard the testimony of Mrs. Steele?

A. A portion of it.

Q. Did you hear Mrs. Steele's testimony concerning the figuring up of the acreage and the consideration of each deed? **[1271]**

A. I did.

Q. What is your recollection upon that subject?

A. I recall that I had Mrs. Steele figure the amount of acres in each one of those documents. The Linn & Lane Timber Company was incorporated for $100,000; I wanted to make the consideration of those deeds sufficient to cover the amount of the capital stock of the Linn & Lane Timber Company—

Q. That is, you wanted to apportion that consideration between—

A. Between the three counties.

Q. And in the three deeds? A. Yes, sir.

Q. So as to make the aggregate total consideration of the three deeds even with the capital stock of the company?

A. That was the intention.

Q. That was the object of the figuring and apportioning of the consideration? A. Yes, sir.

Q. And why did you want the consideration in the three deeds and the amount of capital stock to correspond?

A. Mr. Smith's idea was to turn these lands over to the Linn & Lane Timber Company in consideration of the stock of the company.

(Testimony of Charles L. Trabert.)

Q. And was that the reason for making the aggregate consideration of the three deeds equal the amount of the capital stock of the company?

A. That was the reason.

Q. It appears in the testimony already taken in this case by the admission of counsel that Vernon A. Smith is the son of Mr. C. A. Smith; that is a fact? A. Yes, sir. **[1272]**

Q. How old a boy is he, about?

A. I think he is 22. I can't recall exactly. 21 past.

Q. About that? A. About that.

Q. Where is he now?

A. At New Haven, Connecticut.

Q. Attending college? A. Attending Yale.

Q. You of course knew him in 1906?

A. Yes, sir.

Q. (Showing witness book.) I call your attention to the minutes of the first meeting of the incorporators of that company; those minutes are in evidence; especially to those of the meeting of the incorporators and directors on June 9th, 1906; will you state in whose handwriting those minutes are?

A. In Vernon Smith's.

Q. Do you remember the occasion of his entering those minutes? A. Vividly.

Q. Where was he doing the work?

A. In my office.

Q. Why did you use the word "vividly"?

A. He immediately demanded the $10.00 due for the writing of the minutes in there.

(Testimony of Charles L. Trabert.)

Q. The by laws provide that the secretary shall get $10 for a meeting? A. Yes, sir.

Q. And that was probably the first work that the young man did in the way of business around there?

A. I think it was.

Mr. UELAND.—At this time I will offer in evidence defendants' exhibits heretofore marked for identification, "C" and "D."

Q. (Showing witness papers.) Mr. Trabert, state if you know in whose handwriting the endorsement on the outside of these three deeds is? Each reads, "Deed, C. A. Smith & Wife to Linn & Lane Timber Co." One reads, "Linn County, Oregon," the other "Lane [1273] County, Oregon," and the third "Douglas County, Oregon."

A. That is all my handwriting. The ink.

Q. What is in pen and ink I mean.

A. Yes, sir. I did not write the "Frederick A. Kribs," on the Lane County one. The ink at the bottom.

Q. I refer to what is written on the top; the endorsement at the top on the outside.

A. At the top, the ink is my writing.

Q. Mr. Trabert, at the time that you received from the office of Lind & Ueland the envelope and incorporation papers referred to, did you or did you not receive the record book which we have here before us, and which is already in evidence, of the Linn & Lane Timber Company? I mean the book itself; the blank, with the blanks for corporation stock?

(Testimony of Charles L. Trabert.)

Mr. McCOURT.—That is objected to as immaterial.

A. It is my impression I did, but the Governor may have brought it over when he came to that meeting.

Q. Well, have you seen that record book before? It is here now before the examiner.

A. Yes, sir.

Q. Where was that book kept, if you know, after the meeting referred to of June 9th, 1906?

A. On a particular shelf in our vault set aside for our corporation minute and stock books.

Q. Calling your attention to the stock record there, I will ask you whether any of the certificates of stock, outside of the signatures, were made out by you? A. In full by me.

Q. Both upon the stub and in the body of the certificate? A. Yes sir. **[1274]**

Q. Is that true of certificates Nos. 1, 2 and 3?

A. Yes, sir.

Q. Six? A. Yes, sir.

Q. Seven? A. Yes, sir.

Q. Eight? A. Yes, sir.

Q. Nine? A. Yes, sir.

Q. Ten? A. Yes, sir.

Q. Eleven? A. Yes, sir.

Q. Twelve? A. Yes, sir.

Q. Thirteen? A. Yes, sir.

Q. Fourteen? A. Yes, sir.

Q. Fifteen? A. No, sir.

Q. Nor in those subsequent to fifteen?

(Testimony of Charles L. Trabert.)

A. Until those issued recently.

Q. Under whose direction was that work done by you; that is, this clerical work?

A. Mr. C. A. Smith's.

Q. Is that true as to the certificate No. 6, for 15 shares, to Charles J. Johnson? A. Yes, sir.

Q. Do you know what was the consideration for those 15 shares?

Mr. McCOURT.—I object to that as incompetent, irrelevant and immaterial, and for the further reason that no consideration passing for stock after the formation of the company and the issuance of the original stock, could have the effect of changing the original notice of the company as to the character of the title which it received to the lands in question, or any notice that it may have had of fraud in the acquisition of the title to the lands from the Government. **[1275]**

Q. Just briefly state, if you know, what the consideration was.

A. Money and stock consideration.

Q. How much money, about, in round figures?

A. In the neighborhood of $21,000.

Q. And what stock?

A. 150 shares, as I recall it, in the C. A. Smith Timber Company of Minnesota.

Q. Do you remember, Mr. Trabert, whether certificate No. 7, assigned to Charles J. Swanson by C. A. Smith—do you remember whether you had anything to do with delivering that certificate to Mr. Swanson?

(Testimony of Charles L. Trabert.)

A. I had that in my hands, but I don't recall whether I personally gave it to Mr. Swanson, or whether some one else did.

Cross-examination.

(By Mr. McCOURT.)

Q. Who is Mr. Johnson?

A. Mr. C. J. Johnson is the Vice-president of the C. A. Smith Lumber Company.

Q. And how long has he been Vice-president of that company—is that C. A. Smith Lumber Company in Oregon or Minnesota?

A. In Minnesota.

Q. Is that a company that is doing business in Oregon? A. No, sir.

Q. How long did you say he had been Vice-president?

A. I can't tell you. Mr. Johnson was Vice-president for a period, and then left the company and came back afterwards, and has been Vice-president continuously now I should judge for seven years. **[1276]**

Q. You say you kept those three deeds, Exhibit 155 in case No. 3320, and Defendants' Exhibits "C" and "D," in a package with the incorporation papers? A. Yes, sir.

Q. Have any other deeds in that package?

A. No, sir.

Q. Those were the only ones you had in there?

A. Yes, sir.

Q. Those are deeds from Smith to the Lumber company?

(Testimony of Charles L. Trabert.)

A. To the Linn & Lane Timber Company.

Q. To the Linn & Lane Timber Company?

A. Yes, sir.

Q. At the time that you claimed those deeds were delivered to the company the record did not show that Mr. Smith had any title to the lands at that time, did it? A. The Oregon record?

Q. Yes. A. I don't recall from memory.

Q. Don't you recollect that it showed the title in Nils O. Werner?

A. No, sir. I don't recall just what condition the title was in at that time.

Q. What did you do with the deeds that were later executed and delivered to Mr. Smith from Nils O. Werner, covering these lands?

A. Those deeds were kept, under my filing system, under the descriptions which were covered by those deeds.

Q. How did you happen to keep those under those descriptions?

A. Because these conveyed all the lands to the Linn & Lane Timber Company, and represented only their property. I could not keep all my title papers connected with the Linn & Lane Timber Company, or any of our other interests, in one envelope; so I have a filing case in which I keep all lands by the descriptions. The Werner deeds went there as I recall it, but these deeds covering all the particular tract were kept with the corporation papers, [1277] naturally, being all their property.

Q. Yes, but the Nils O. Werner deeds covered all

(Testimony of Charles L. Trabert.)

of the land in Linn County held by the Linn & Lane Timber Company. A. But only led to these.

Q. Now the deeds from Nils O. Werner to Smith, Charles L. Trabert and wife to Smith, Holmberg and wife to Smith, and a number of other grantors, those were the deeds that actually sent the title into the Linn & Lane Timber Company?

Mr. UELAND.—I object to that as incompetent and calling for a legal conclusion.

A. They covered the lands, yes, sir.

Q. And they were the deeds, as you understood at the time of the record owners of the title to the lands?

Mr. UELAND.—The same objection.

A. The record owners, as I understood it.

Q. But yet you didn't file those deeds with the Linn & Lane papers at all.

A. No. No original papers were filed with the Linn & Lane papers, because the Linn & Lane deeds covered all of our holdings in Linn and Lane counties, and it would be impossible to file them with those deeds; otherwise it would take one box to cover all the descriptions in Linn & Lane counties. Each description is kept by itself, or bunch of descriptions, and all the title papers from the patent down to the present time are kept with those descriptions; but the deeds which conveyed all this property to the Linn & Lane Timber Company were kept with the corporation papers.

Q. And those deeds were made by Smith?

A. Yes, sir. **[1278]**

Q. But the records or deeds passing the title

(Testimony of Charles L. Trabert.)

down to Smith you kept in a separate file?

A. Yes, sir.

Q. And they were executed a long time after?

A. Without reference to those documents, I don't remember when they were executed.

Q. And none of them were recorded?

A. No, sir.

Q. Why weren't they recorded; do you know?

Mr. UELAND.—That is objected to as not cross-examination.

A. Because we were purchasing in that district, and if it became known that Mr. Smith, or any of our interests, were interested in the buying of land there, naturally the timber would increase in price.

Q. How much land did you buy in Linn County after 1906?

A. I don't recall. I should judge several sections in the aggregate.

Q. Who from?

A. That I can't recall without reference to my records.

Q. Well, it was generally known that you did have large holdings in there, wasn't it, prior to 1906?

A. No, I don't think it was.

Q. Mr. Kribs was doing the buying out there, wasn't he?

A. Mr. Kribs was buying some timber there, yes, sir.

A. And it was generally known that he was in the market for timber up in that locality, wasn't it?

(Testimony of Charles L. Trabert.)

Mr. UELAND.—I object to that as not cross-examination.

A. I know nothing as to what was known as far as Mr. Kribs was concerned, out there. I have never been out there myself, **[1279]** and was not at that time.

Q. Well, was that the reason you didn't put the deeds on record down in Lane County and Douglas?

A. Lane was such a small amount that it didn't cut any figure. The same reason in Douglas County.

Q. The same reason in Douglas County?

A. Yes, sir.

Q. What was the reason you offered some of the deeds for record in Douglas County some six months before you did in Lane County?

Mr. UELAND.—That is objected to, as not appearing, and that is not a correct statement, Mr. McCourt. You are mistaken in your premises.

Mr. McCOURT.—Well, he can correct it if I am.

Mr. UELAND.—I object to that as assuming a state of facts that does not appear, and also that it is improper cross-examination.

Q. (Showing witness papers.) I call your attention to a paper marked Government Exhibit 158, in case 3320, and Exhibit 62 in case No. 3319, purporting to convey a one-tenth interest in certain lands held by you in Linn, Lane, Coos, Curry and Douglas Counties, purporting to have been executed on the 23rd day of October, 1906, and showing a date of recording in Douglas County of March, 1908, and in Linn County September 9th, 1908; I will ask you

(Testimony of Charles L. Trabert.)

why it was that that deed was recorded in Douglas County in March, and not recorded in Linn County?

A. The reason for that was that we were contemplating at this time negotiating for a bond issue on certain of our lands, **[1280]** amongst which many of our lands in Coos, Curry and Douglas County were included, together with lands in California; those lands were either intended to go in that trust deed, or did go into that trust deed, and that is why they were recorded.

Mr. UELAND.—They are other than the Linn & Lane Timber Company lands? A. Yes, sir.

Q. I also call your attention to a deed of J. E. Holmberg and wife to C. A. Smith, purporting to convey lands in Linn, Lane, Coos, Curry and Douglas Counties, showing a recording in Douglas County on the 12th day of March, 1908. (Showing witness paper.)

A. The same reason.

Q. The same reason as you gave for the latter?

A. Yes, sir.

Q. But you say the reason that you didn't record these other deeds in Linn County was to conceal the fact that C. A. Smith was interested in the lands?

A. Yes, sir.

Q. That covers both these cases?

A. Yes, sir.

Q. Now, I call your attention to a deed of F. A. Kribs and wife, dated October 24th, 1904, to Charles A. Smith, and to the fact that that was recorded in Linn County in January, 1905, about a year and

(Testimony of Charles L. Trabert.)

more before you ever organized the Linn & Lane Timber Company? A. Yes, sir.

Q. Well, what have you to say now as to the concealment, when you already had a deed on record showing that C. A. Smith himself owned that land?

A. We only owned a portion. Naturally the more land a man owned the more they would consider he would want to buy, and the higher the price would be. This was only a portion of the land. **[1281]**

Q. Yes, it was only a portion of it, but it showed that he was a buyer in the district; that he was in there, and it would raise the price just as much as if he had 10,000 acres, wouldn't it?

A. No, sir. It depends on the buyer.

Q. Well, it shows that he was the buyer?

A. As I say, it was only scattering purchases, and would not raise the price. We have made investments of just a few thousand acres in different districts out there, and it had no effect on the price at all. It was known that we were not going in there heavily for a manufacturing proposition; but if it became known that we were gradually getting the lands from time to time in a district for a manufacturing proposition, the price would immediately soar, and it would be prohibitory.

Q. Well, didn't it appear that part of the lands in one of the cases, No. 3318, as well as those in No. 3319, had gone to Mr. Smith, which would show that he was in there? A. Some of them, yes.

Mr. UELAND.—It may be understood that the same objection applies to all of this, as being improper cross-examination and immaterial?

(Testimony of Charles L. Trabert.)

Mr. McCOURT.—Yes.

Q. You knew at that time, Mr. Trabert, in 1906, that practically all of the lands that were available in that district had been secured by you people; you had been buying in there for six years at that time, hadn't you?

A. Approximately that. About five years.

Q. Well, it was a little over six, wasn't it?

A. I don't recall just at the present moment when the first **[1282]** lands were bought there.

Q. Bought there in April, 1900, weren't they?

A. I don't recall those lands.

Mr. UELAND.—The first Puter lands were bought in 1900?

A. Then it was six years.

Q. And yet you were afraid that it would be known that you were in the district?

A. Why, no. There are lands to be bought there to-day.

Q. Well, aren't you still afraid to record your deeds out there?

A. No, we were compelled to record them.

Q. When you talk about "we," and "our," you refer to the C. A. Smith Timber Company, I assume?

A. Or to the Linn & Lane Timber Company. I refer to any of Mr. Smith's interests.

Q. These papers were kept in the office of the C. A. Smith Lumber Company?

A. The C. A. Smith Timber Company.

Q. There is a C. A. Smith Lumber Company here as well? A. Yes.

(Testimony of Charles L. Trabert.)

Q. And its business is done in the office of the C. A. Smith Timber Company? A. No, sir.

Q. That is a separate concern and has a separate office? A. Yes, sir.

Q. How old did you say Vernon A. Smith was?

A. 21 is my impression. May be a year's difference.

Q. Then, at that time, at the time this corporation was organized, he was about seventeen?

A. Yes, sir.

Q. And he was a director of the company, was he? A. No, sir.

Q. One of the stockholders merely?

A. I think he was not a **[1283]** stockholder even. He was an officer of the company.

Q. Without holding any stock?

A. Yes, sir.

Q. What officer was he? A. Secretary.

Q. Was that the reason for the articles of incorporation stating that it should not be necessary for the secretary to own any stock?

Mr. UELAND.—I object to that as incompetent, irrelevant and immaterial and not cross-examination.

A. Not particularly. Many of our corporations have reserved that authority; that right.

Q. Do you recall how many acres were deeded to Mr. Smith by Mr. Kribs in 1904? A. I do not.

Q. Do you recall how many acres Mr. Smith held in his own name out there in Linn County as early as 1904 and 1905? A. I do not.

Q. Several thousand acres in addition to those

(Testimony of Charles L. Trabert.)

included in these cases, were there not?

A. I couldn't say as to that. I have got the title papers in my office, but just what was in his name I couldn't say, although he had the equitable title to a great deal more than was in his name.

Q. He merely owned the equitable title to this entire 43,000 acres?

A. No, sir. I understood when he drew those deeds that he owned the lands that were deeded to the company. I had the deeds drawn under his instruction.

Q. You understood that he had the record title to them?

A. If he didn't have that it would be acquired.

Q. Well, didn't it occur to you that he could not have the **[1284]** record title if he wanted to conceal the fact that he was going to be a buyer out there?

A. Not at all. I didn't say he had the legal title. I said he had to my mind the equitable title. He certainly didn't have the record title, if there was only a few thousand acres in the deed from Kribs recorded, and possibly a few more.

Q. You had the records before you; you were the custodian of the records of the office, were you not?

A. Yes, sir.

Q. And he didn't come out and dictate to you from the plats by metes and bounds any particular lands that you were to include in the deeds, but just told you he was going to transfer the title to all the lands in your files in Linn County to the Linn & Lane Timber Company?

(Testimony of Charles L. Trabert.)

A. He instructed me to make a deed for all of our lands in Linn & Lane Counties, and the particular description in Douglas County.

Q. How did you have the record of that; did you have it on plats, or did you have to go to the deeds?

A. No, sir; I had it on plats. I kept a record on the plats.

Q. Does your plat show in whom the title lies at the time?

A. No. I would have to look up the individual deeds and trace down the title.

Q. You don't recollect that you did that in this case? A. I know I didn't.

Q. You merely took the plats as you had them?

A. Exactly.

Q. Did you dictate these deeds to Mrs. Steele?

A. I don't know as I dictated them. I indicated what I wanted. **[1285]**

Q. Gave her a form to go by?

A. Very probably, yes. The usual method.

Q. Do you usually press copy your deeds there?

A. Usually. Not always. There are two reasons for that; one reason is we use a copying ribbon, which will blur, and another reason is, occasionally the documents go out of our office, possibly go to the offices of our counsel, and until the matter is concluded we like to have a copy to refer to. After that, after we have no further use for them, we usually destroy them.

Q. You make these press copies for your own reference? A. Yes, sir.

Q. Do you recollect that you had press copies of

(Testimony of Charles L. Trabert.)

the deeds which have been offered in evidence here this morning?

A. I could not recollect that, we have so many.

Q. Exhibits "C" and "D," and Government Exhibit 155?

A. I would not be able to recall that.

Q. You don't have any record ribbons in your office at all? A. No, sir.

Q. No machine with record ribbons? Were you ever a stenographer? A. No, sir.

Q. Know anything about ribbons and typewriters?

A. Slightly, in connection with the business.

Q. (Showing witness paper.) I call your attention to Government Exhibit 155; will you look at your acknowledgement down there, the typewriting, and state whether or not that is not a record ribbon that wrote that?

A. No, that is a copying ribbon. **[1286]**

Q. What makes you think so?

A. Can I show it?

Q. Yes, you bet you can. Show it if you can.

A. I think I will take that back. It don't look like—no I won't either. From that "S" I gather that is a copying ribbon.

Q. The other indications are not present, are they?

A. Well, yes, I think they are. See the blue where I put my thumb over it? Pardon the dirt.

Q. Do you see anything there but dirt?

A. Yes, I see some blue ink.

Q. Now, that is entirely different from this other

(Testimony of Charles L. Trabert.)

part of the deed?

A. Oh, yes, it is different. It is a different color. I can explain that. We use three typewriters in our office, and when one is busy I go over to another. One of my machines is a wide machine which we use when we need to make wide legal documents, and all the ribbons may not be the same color. Frequently that is left to the pleasure of the particular stenographer operating that machine, as to what ribbon she wants to use.

Q. Now, can you say whether or not the signature of Charles A. Smith upon that Government Exhibit No. 155 has been press copied?

A. It was not. Not press copied.

Q. (Showing witness paper.) I wish you would look at Government Exhibit 160 now, in case No. 3320, and state whether or not that is made by a copying ribbon; the typewriting?

A. Yes, sir.

Q. Is that a copying ribbon?

A. But this has not been copied.

Q. You don't know why I suppose?

A. No. Possibly the ribbon was old and it was not as likely to blur, or else it may [1287] have been a rapid copying ribbon, which we used on our rapid roller process. Used both.

Q. What kind of machine do you use there?

A. This is a Remington.

Q. Are those others Remingtons too?

A. Yes, sir, all Remingtons. All Remingtons in my office.

Q. (Showing witness paper.) Now, look at

(Testimony of Charles L. Trabert.)

Government Exhibit 159 and state whether or not that is a copying ribbon too.

A. That is a copying ribbon.

Q. I wish you would make that test on those two. and see.

A. Of course this ink is very old, but I will get the heaviest. (Testing it.) That is a copy to my mind. You see it turns bluer. (Referring to Exhibit 160.) This is a copy. You see the blue ink down there mingled with the dirt. (Referring to Exhibit 159.)

The further taking of testimony in these causes was here adjourned until one forty-five P. M.

[1288]

Thursday, June 9th, 1910, 1:45 P. M.

Met pursuant to adjournment.

Present, as before.

CHARLES L. TRABERT recalled.

Cross-examination (Resumed).

(By Mr. McCOURT.)

Q. I understood you to say, Mr. Trabert, that those deeds were made out prior to the 9th day of June, 1906? A. Yes, sir.

Q. Do you remember whether or not it was on the 4th day of June, or later than the 4th day of June?

A. It was the 4th day of June.

Q. Do you remember whether they were drawn, typewritten, the same day they were executed?

A. There was probably a couple of days consumed in the typewriting.

Q. Do you recall anything about Mrs. Steele having to postpone her journey out west on account of

(Testimony of Charles L. Trabert.)

the execution or making out of these deeds?

A. Yes, sir. She wanted to take a longer vacation that year, and we could not permit it on that account. I remember she was disappointed at the time.

Q. She didn't go until some time in July?

A. No, sir, she didn't go until some time in July.

Q. How many days were consumed in making these deeds?

A. Only a couple of days in making the deeds. Possibly we had been preparing them a week before. There were other reasons afterwards though that prevented her going on her vacation until July. She was quite ill I think for one thing. She was sick for some time.

Q. It wasn't the making of the deeds then that caused the [1289] postponing of the trip?

A. Yes. She would have gone before. That was the reason that she could not go at that time.

Q. Gone before when?

A. She would have gone the 1st of June. That is what she wanted to do. During that time, even before the 1st of June, we had figured on this proposition, and were preparing for the deeds. The lands were checked on the plats, and had to be gone over carefully, and then from those plats she made the deeds. Of course it might have taken more than two days to do the typewriting. I don't recall just exactly the length of time.

Redirect Examination.

(By Mr. UELAND.)

Q. I forgot a matter that I should have asked

(Testimony of Charles L. Trabert.)

him before, if you don't object?

Mr. McCOURT.—That is all right.

Q. Mr. Trabert, the records of the Linn & Lane Timber Company already in evidence in this case show that Vernon A. Smith resigned as Secretary October 31st, 1908; that Nan Smith, now Nan Warner, resigned as treasurer about the same time; that Mr. Smith resigned as president about that time; that B. F. Nelson succeeded Mr. Smith as president, and that C. C. Wyman succeeded Vernon Smith as secretary and treasurer; the evidence already taken in the case shows that there was an annual report made to the Secretary of State of Oregon, concerning the Linn & Lane Timber Company, it states for year ending June 30th, 190—, but it is dated June 14th, 1909, and purports to be a report for the [1290] year 1909, as to who are the officers of the company; that report, which is marked United States Exhibit 167 was signed by Vernon A. Smith; I will ask you to state, Mr. Trabert, whether you had anything to do with the preparation of that report?

A. Yes, sir, I prepared that with my other reports. For instance, the first of June I—

Q. Just don't go any further. You prepared it?

A. I prepared it.

Q. Did you prepare it about the time it purports to have been made, June, 1909? A. Yes, sir.

Q. Will you please explain the discrepancy between that report and the records of the corporation as to who were the officers of the corporation in 1909; how that discrepancy came about in your report?

(Testimony of Charles L. Trabert.)

Mr. McCOURT.—That is objected to as immaterial.

A. The first of June, or about the first of June, the Secretary of State of Oregon sends me a statement that our corporation taxes are due; we have four or five corporations in Oregon; that do business in Oregon; when those came I made them all out, to my best memory, and returned them, but at that time the Linn & Lane Timber Company books were out of my hands; they had been turned over to the Northwestern National Bank, and as a matter of fact I was not conversant with who the officers were.

Q. That is the way the mistake came to be made?

A. Yes, sir. **[1291]**

Recross-examination.

(By Mr. McCOURT.)

Q. You never were an officer of that company, were you? A. No, sir.

Q. How did you get the statement; how did they happen to send it to you?

A. Because I have been looking after that part of Mr. Smith's business.

Q. Were they sent to you at all?

A. They were sent to the C. A. Smith Timber Company's office, addressed to the Linn & Lane Timber Company, and would naturally come to me.

Q. Came to the office? A. Yes, sir.

Q. And you got them? A. Yes, sir.

Q. And you prepared this report without looking at the records of the corporation? A. Yes, sir.

Q. And it had escaped your mind that Nelson and Wyman had become officers of the company in-

(Testimony of Charles L. Trabert.)

stead of Smith and Vernon Smith?

A. Yes, sir. While I was cognizant of it, in making out all these reports together it simply escaped my mind.

Q. Where did you say the records were?

A. In the hands of the Northwestern National Bank of Minneapolis—now, let me explain; possibly at that time they were in the hands of the Swedish-American National Bank. The Swedish-American National Bank sold out to the Northwestern National Bank, and that is where they are at the present time. It was one or the other of those two banks.

Q. Well, they are here largely at the present time, aren't **[1292]** they?

A. I beg pardon.

Q. I say the records are here, are they not, largely, at the present time?

A. Yes, sir, they are here now. I could tell from those records where they were.

Q. Who is Secretary of the company now?

A. I am.

Q. Aren't you supposed to have the custody of the records?

A. I have the custody at the present time.

Q. What?

A. I have the custody of their minute-book and stock-book at the present time.

Q. Who does the record show was secretary in 1909? A. Mr. Ueland; C. C. Wyman.

Q. Where is Mr. Wyman's office?

A. Mr. Wyman's office is in the Chamber of

(Testimony of Charles L. Trabert.)

Commerce, Minneapolis.

Q. Didn't he have the custody of the record?

A. No, sir, he never had the custody. He was simply—while he was secretary he was a trustee for the bank, and the bank had the custody.

Q. When were those records delivered into the custody of the bank?

A. I would have to refer to the records. Early in 1908, I think.

Q. I wish you would refer to that record and tell us when it was. (Showing witness record.)

A. October 31st, 1908.

Q. Up to that time they had been in your possession? A. Yes, sir.

Q. Not as an officer of the company, but as a clerk of the C. A. Smith Timber Company?

A. Exactly.

Q. Vernon A. Smith never assumed to have the control or custody of these records?

A. That was his office. **[1293]**

Q. What say? A. That was his office.

Q. That was his office? A. Yes.

Q. But you were the man who actually controlled— A. No.

Q. And had the custody of the records?

A. He had them. When he had occasion to use the minute-book he went into the vault and took it out himself and put it back himself.

Q. Are any of those minutes in his handwriting except those first ones?

A. Oh, yes. They are all in his handwriting until this year. That is my recollection. All in

(Testimony of Charles L. Trabert.)

Vernon Smith's handwriting up to and including January 14th, 1908.

Q. After that they are in somebody else's?

A. Yes, sir, either Mr. Wyman's or in my own. From October 31st, 1908, they are either in my handwriting or Mr. Wyman's. Signed by the Secretary at that time, whoever it was. Well, I was Secretary at that time, October 31st, 1908. I was Secretary of the company.

Q. You did the writing then?

A. Yes, sir, I did the writing then.

Q. When were you elected secretary?

A. In—

Mr. UELAND.—You are mistaken about that I think.

A. Am I mistaken about that? I was secretary for that particular meeting, but I was not secretary. Mr. Wyman was secretary I think at that time, or Vernon was secretary at that time still. Mr. Wyman was.

Mr. UELAND.—Then you were acting secretary?

A. I was acting secretary of that meeting. That is why I signed the minutes.

Q. Then the first of the following year you were elected **[1294]** secretary?

A. No, Mr. Wyman was secretary then, and has been until a month ago.

Q. And the custody of the records was in Mr. Wyman until about a month ago?

A. Yes, sir, within the last month.

Q. When there has been a new election of officers? A. Yes, sir.

(Testimony of Charles L. Trabert.)

Q. They then passed out of the custody of Mr. Wyman and the bank? A. Yes, sir.

Q. Back to you? A. Yes, sir. **[1295]**

[Testimony of Edgar L. Mattson, for Defendants.]

EDGAR L. MATTSON, a witness produced on behalf of the defendants, after being first duly sworn, testified as follows in answer to questions by Mr. Ueland:

Q. Your name is Edgar L. Mattson?

A. Yes, sir.

Q. You live in Minneapolis?

A. Yes, sir,—well, my legal residence is Lake Minnetonka.

Q. That is a suburb of Minneapolis?

A. Yes.

Q. You have lived in this state and at or around Minneapolis for about how many years?

A. Over 30; 34 years.

Q. What is your present occupation?

A. Assistant Cashier of the Northwestern National Bank.

Q. Of this city? A. Yes.

Q. How long have you held that position?

A. Since November 28th, 1908.

Q. What position did you hold previous to that date, if any?

A. I was and am cashier of the Swedish-American National Bank of Minneapolis.

Q. And how long had you been cashier of the Swedish-American National Bank of Minneapolis previous to November 28th, 1908, about?

(Testimony of Edgar L. Mattson.)

A. Eight or nine years, I think.

Q. Was there a business transaction between the Swedish-American National Bank and the Northwestern National Bank on or about November 28th, 1908? A. There was.

Q. What was the nature of it?

A. A contract whereby the Swedish-American National Bank sold to the Northwestern National Bank its deposits, and the Northwestern assumed them.

Q. In that transaction that you refer to of November 28th, **[1296]** 1908, did the Northwestern National Bank take and receive from the Swedish-American National Bank all the obligations which the Swedish-American National Bank held at that time against Mr. C. A. Smith and against Mr. C. J. Johnson? A. Yes, sir.

Mr. McCOURT.—I object to that question, and move to strike out the answer of the witness, for the reason that it is immaterial and irrelevant, and for the further reason that any title to the stock—any title or right in or to the stock of the Linn & Lane Timber Company, or any obligations of said company acquired by the Swedish-American National Bank would be taken wholly subject to any notice or knowledge of fraud coming to the company relative to the property acquired by it which might be an asset for the payment of the obligations acquired by the bank; and for the further reason that the owners or holders of the stock of the Linn & Lane Timber Company would acquire no greater title to the company's property than the company itself had. If it

(Testimony of Edgar L. Mattson.)

had none, the stockholders would acquire none.

Mr. UELAND.—I will ask Mr. McCourt whether he desires to raise any point about it not being the best evidence?

Mr. McCOURT.—Oh, no, not at all.

Mr. UELAND.—For we can produce the contract by which the transfer was made, if the counsel should care to have that, as the best evidence; but you say you don't raise that question?

Mr. McCOURT.—No, I will waive that. I merely object to the materiality and relevancy of the testimony.

Q. Did the Northwestern National Bank at the same time receive the security that the Swedish-American National Bank held [1297] for that indebtedness of C. A. Smith and C. J. Johnson consisting in part of the stock of the Linn & Lane Timber Company?

Mr. McCOURT.—The same objection.

A. It did.

Q. You say it did? A. Yes.

Q. State whether or not the Northwestern National Bank has since that time continued to hold that security. A. It has.

Q. And does the bank hold it now?

A. It does.

Q. There is already in evidence in the case a contract between the Swedish-American National Bank on the one side, and C. A. Smith and C. J. Johnson on the other side, dated October 31st, 1908, marked Defendants' Exhibit "I," a contract by which a majority of the stock of the Linn & Lane Timber

(Testimony of Edgar L. Mattson.)

Company was pledged to the Swedish-American National Bank; in that contract it stated, in substance, that the aggregate of Mr. Smith's obligations to the Swedish-American National Bank at that time, October 31st, 1908, was $337,240.45; will you please state whether or not that was as a matter of fact the aggregate amount of his obligations to the bank at that time?

A. I will have to refer to the books for that.

Q. Refer to your papers so as to be able to answer the question.

Mr. McCOURT.—I want to raise the same objection to that.

A. (Referring to papers.) Well, I figure up $333,000 in my hurry. I would have to take and check it. The contract had an absolute detail of what that indebtedness was, and I think there is also another $3,000. I think I make it $336,000 here.

[1298]

Q. Well, the exact amount is not material. Can you say from the examination you have given now, that the indebtedness was in excess of $330,000?

A. Yes.

Q. Mr. Mattson, the contract between the Swedish-American National Bank and C. A. Smith and C. J. Johnson, of October 31st, 1908, already referred to, gives the aggregate of Mr. Johnson's obligations to the bank at the time when that contract was made as $56,450.00; will you please state if that is the correct amount of his obligations at that time to the bank? A. It is.

Q. Or was? A. Was, yes.

(Testimony of Edgar L. Mattson.)

Q. Have you at my request, Mr. Mattson, within a day or two, examined the books and papers in the Northwestern National Bank with a view of ascertaining the aggregate amount of the obligations of C. A. Smith which came to the Northwestern from the Swedish-American, as you have testified, still remaining unpaid?

A. I have, with the aid of a clerk. I have not seen all the records myself.

Mr. McCOURT.—I object to all these questions as immaterial.

Mr. UELAND.—Not as not the best evidence?

Mr. McCOURT.—Oh, no.

Q. What is the amount of those obligations which is unpaid, in the aggregate?

A. $143,714.95, as maker and endorser.

Q. Have you made a similar examination with a view of ascertaining the aggregate amount of C. J. Johnson's obligations still unpaid of those which came to the Northwestern from the Swedish-American? A. I have. **[1299]**

Q. What do you find to be and what is the aggregate amount still unpaid upon those obligations?

A. $42,950.00 as maker and endorser.

Q. Mr. Mattson, have you within a day or two at my request examined the books of the Swedish-American with a view of ascertaining the aggregate amount of Mr. C. A. Smith's obligations to the Swedish-American National Bank on February 14th, 1908? A. Yes.

Q. And what was the aggregate amount of his obligations at that time?

(Testimony of Edgar L. Mattson.)

A. Now, Mr. Ueland, excuse me a moment; I probably misunderstood your question. When I gave you those figures of $330,000, I was under the impression you asked me as of the date of February 14th; was that the date you asked me?

Q. Yes.

A. Then, you are asking me this question now the same thing?

Q. No, you testified as to the amount—

A. Oh, yes, I know now, of course. I got this evidence mixed up. I will have to correct this. I will have to refer to that. I have been giving you those figures before as of February 14th. I understood you to ask me for that.

Q. No, I said October 31st.

A. Well, I was mixed up on that. I will have to change that evidence around, because it is not correct. You are asking me for three different dates?

Q. Yes.

A. Oh, I took your second question as your third.

Q. Oh, I see. When you testified there was $330,000 or upwards of obligations on the part of C. A. Smith to the Swedish-American **[1300]** National Bank, you referred as of February 14th, 1908? A. I did.

Q. And as to the amount of those obligations on October 31st, 1908, when the contract pledging additional securities was given, you can say, I understand, that that amount was what was recited in the contract? A. Yes, sir.

Q. That the contract states the amount correctly?

(Testimony of Edgar L. Mattson.)

A. Yes, sir.

Q. And the same is true about Johnson's obligations? A. Yes, sir.

Q. I think that makes the correction.

A. Yes.

Cross-examination.

(By Mr. McCOURT.)

Q. What is this record from which you gave the figures mentioned?

A. What the book is called?

Q. Yes. A. The Liability or Line Book.

Q. Of the Swedish-American National Bank?

A. Yes, sir, of the Swedish-American National Bank.

Q. Which has been amalgamated or absorbed by the Northwestern National Bank?

A. Yes, sir, the Northwestern National Bank of Minneapolis.

Q. And what is this Lauritzen Malt Company?

A. A company manufacturing malt.

Q. Johnson and Smith interested in that?

A. Yes.

Q. Mr. Smith endorsed the notes of that company? A. Some of them. **[1301]**

Q. And Johnson endorsed some of them?

A. Yes.

Q. And some are not endorsed?

A. Not endorsed by either of those two.

Q. Nor by any one else, were they?

A. Yes, they were.

Q. You don't seem to have a record of it; what

(Testimony of Edgar L. Mattson.)

some of them?

A. Well, I can't answer that question positively.

Q. Well, if there was any endorser you would have a record of the endorser in this line of particulars?

A. We may have had a guaranty. I rather think we did.

Q. Now, the liability of Smith as endorser and of Johnson as endorser for this Lauritzen Malt Company are included in your list of liabilities of Smith?

A. Yes, sir, as endorsers.

Q. Which you understand were secured by some of the stock of this Linn & Lane Timber Company?

A. Yes, sir.

Q. As collateral or as a pledge? A. Yes.

Q. I notice you have here among these sheets what appears to be a list of liabilities of the Swedish Printing Company? A. Yes, sir.

Q. Mr. Smith an endorser on some of their paper?

A. Mr. Smith was the signer of a guaranty of their paper.

Q. To what extent?

A. $4,500 or $5,000. The amount that they loaned. We didn't loan beyond the amount of the guaranty.

Q. Well, I don't catch that in this record.

A. (Referring to papers.) Well, here the company owes money as maker; now you are going back in 1906; if you want to get at the date, about the time, I will show you; here in 1908, March, April and

(Testimony of Edgar L. Mattson.)

so on, the company owes $4,500. **[1302]**

Q. You think Mr. Smith guaranteed that?

A. Oh, yes, I know it. We had the principal stockholders of that company sign the guaranty.

Q. Had he been guarantor for some years of their business?

A. Ever since that paper was bought by that corporation.

Q. I understood you to say a while ago that the amount of his liability on that Lauritzen business was probably $13,500. A. I beg pardon.

Q. I understood you to say awhile ago that the amount of his liability on the Lauritzen Malt Company paper was about $13,500. A. Yes, sir.

Q. On October 31st, 1908? A. Yes.

Q. Referring to the page of the liability record of the Swedish-American National Bank, purporting to show the account of C. A. Smith, there appears under the heading "Particulars" the names of a great many persons and corporations; were they endorsers with Mr. Smith, or was he guarantor of their liabilities, or what does that purport to show?

A. The particulars, purport to show the maker of the obligation; the signer of the note.

Q. What?

A. The signer of the note on which he was an endorser.

Q. Well, it does not show then, the particulars, that Mr. Smith as endorser was the actual endorser under that account there for all the different notes?

A. Yes, it shows it.

(Testimony of Edgar L. Mattson.)

Q. Where is that? I refer now to the names down here under the title "Particulars."

A. There is a note of the Mereen [1303] Johnson Manufacturing Company. This is Mr. Smith's liability. This column refers to his liability as maker, and this one as endorser. This particular note is $2,000. That shows that it was the Mereen-Johnson Machinery Company endorsed by C. A. Smith. Here, for instance, is a note of John E. Holmberg, for $5,000, which shows that Mr. Smith is an endorser, because it is in the endorser column.

Q. Where did you get Holmberg's part of the transaction; did you have a separate sheet for him?

A. No.

Q. The bank understood then that this was Mr. Smith's liability?

A. We looked to Mr. Smith for payment of it if Mr. Holmberg failed to pay it.

Q. But supposing you wanted to look up Mr. Holmberg's account, where did you carry his liability?

A. Carried it on Smith's, because he was the endorser of the paper.

Q. Well, did you have a sort of a mental scheme of book-keeping there? Supposing you wanted to get the Holmberg account?

A. We had no Holmberg account. We knew that all Holmberg paper was endorsed by Smith.

Q. You did? A. Yes, sir.

Q. And that it was Smith's liability?

A. Yes, as an endorser.

(Testimony of Edgar L. Mattson.)

Q. Well, you looked to Smith primarily for the money?

A. No, not primarily. We looked to the maker of the note primarily.

Q. Where was Holmberg living at this time?

A. Denver.

Q. Engaged in business here; have some business interests **[1304]** here?

A. No, he had been here formerly.

Q. What business was he engaged in?

A. Contracting and building of flats.

Q. Now, this Mereen-Johnson Machine Company; is that a local concern? A. Yes, sir.

Q. You looked to Mr. Smith as endorser upon that? A. Yes, sir.

Q. Well, at this time, October 31st, 1908, as these several notes became due, they hadn't defaulted; payment wasn't defaulted on them?

A. No, I think not.

Q. Was their additional security demanded at the time of the change of banks?

A. No, there was no change in collateral on account of the change in the banks. The Northwestern took over the exact collateral that the Swedish-American formerly held.

Q. You don't know anything about, or rather the new bank had nothing to do with the change of collateral? A. The change of collateral?

Q. If there was any change; had there been any change?

A. You refer to the $400,000 worth of bonds be-

(Testimony of Edgar L. Mattson.)

ing surrendered?

Q. I understood there was something surrendered.

A. It was all Swedish-American Bank business. The Northwestern holds the collateral to-day in the same shape as it was when the Swedish-American passed it over to them.

Q. Now, prior to October 31st, 1908, had the Swedish-American National Bank held any security on these notes of Holmberg, the Lauritzen Malt Company, the Mereen-Johnson Machine Company, and the other notes upon which Mr. Smith was endorser, beyond the liability **[1305]** of the makers themselves and the endorsement of Mr. Smith?

A. Yes, sir.

Q. What had it held?

A. The C. A. Smith Timber Company bonds.

Q. Securing these same endorsed liabilities?

A. Yes, sir, all of his liabilites.

Q. You don't show the collateral upon this page, do you? A. No, sir.

Q. What have you as to collateral; a record of the collaterals?

A. There were memorandums shown in the envelope that contained them, and there may be in our files some records, lists, etc. Nothing incorporated in the Line book that has to do with that.

Q. Do you recall at this time whether or not you have any list of collaterals which you held of Mr. Smith's at that time?

A. I think we have. I think there are lists.

(Testimony of Edgar L. Mattson.)

Q. Could you get those readily?

A. Yes. I will say in answer to your question that the Swedish-American Bank has been out of business for a year and a half, and that I have simply picked up the things that Mr. Ueland thought you wanted, and I haven't the stuff at hand to give you anything you may ask for. I can't do it now, but I can get it if you will give me time.

Q. I wondered if you could get it in a little while?

A. Oh, yes, it won't take long.

Q. Now, I find by referring to the sheet of the C. A. Smith Lumber Company liabilities, that it shows the lumber company liable in quite a large amount as maker; no record of an endorser at all; would you regard that as Mr. Smith's liability?

A. Yes, sir. **[1306]**

Q. And you took collaterals to secure that?

A. Yes, sir.

Q. His personal collateral?

A. Yes. He was personally liable on that paper.

Q. Was he an endorser on it?

A. He was an endorser or a guarantor.

Q. I wish you would look at that liability record there and see what it shows.

A. (Showing witness papers.) It shows that this is the line of the C. A. Smith Lumber Company.

Q. It does not show whether he is on there as endorser or not?

A. This is not the original record of the notes. I took these line sheets up here because I thought you wanted to know the amount. If you want to go into

(Testimony of Edgar L. Mattson.)

the details as to it I can go back to the discount register that has every note registered, and shows the dates, amounts, maturities, etc., all C. A. Smith Lumber Company paper being guaranteed personally by Mr. Smith, and always has been, every piece we have ever had.

Q. What I am getting at is this; here is one record that shows an endorser as endorser; there is one that does not show anything; still you say it is the same thing.

A. Well, for instance in this case it was Mr. Smith personally that issued his personal notes, and sundry notes that he was an endorser on of people like Holmberg, Mereen-Johnson, and various concerns that didn't borrow to any extent, or were not depositors in the bank. Then we made special sheets for such concerns as the C. A. Smith Lumber Company, and C. A. Smith Timber Company, whose transactions were numerous.

Q. And on those you didn't note whether they were endorsers **[1308]** or guarantors?

A. We considered it the same thing. In the back of this book we had a sheet on which it showed; a memorandum there showed every separate account in this book on which Mr. Smith was liable; it was listed on that sheet, and any time we wanted to know how much he was liable for we turned to that list.

Q. Why didn't you bring that?

A. Well, I pulled out the sheets that I have got, and I didn't bring the list. That is all there is to it. I could easily bring it. That list gives you a list of these sheets.

(Testimony of Edgar L. Mattson.)

Q. Now, I find the liabilities of the C. A. Smith Timber Company in the same condition as the C. A. Smith Lumber Company. A. Yes, sir.

Q. And on that he was personally liable you think as endorser? A. Yes, sir.

Q. Or guarantor? A. One or the other.

Q. Did you hold any collateral with that except this Linn & Lane Timber Company?

A. The bonds before referred to, the C. A. Smith Lumber Company bonds, which were exchanged for this stock.

Q. You speak of the C. A. Smith Lumber Company bonds? A. Yes.

Q. They were surrendered?

A. They were surrendered in exchange for this new collateral which we have been referring to.

Q. Were they retired at that time or merely exchanged? A. Exchanged.

Q. Did you hold them then in connection with something else?

A. For the same purpose.

Q. You had formerly held them to secure this indebtedness? **[1309]** A. Yes.

Mr. UELAND.—I think he misunderstood you, Mr. McCourt. Whether they continued to hold the bonds after they had exchanged them; is that the question?

Mr. McCOURT.—No. I merely asked him if he did hold them for some other purpose after that. He said he exchanged them, and I would assume by that that they surrendered them to Mr. Smith.

(Testimony of Edgar L. Mattson.)

The WITNESS.—Yes, sir.

Q. How much of those C. A. Smith Timber Company bonds have you been holding?

A. I will have to refer to my minutes. (Referring to papers.) I think it was 430 or something of that kind, $400,000.

Q. I find here also liabilities of Johnson & Company of White Rock, South Dakota, as makers upon notes; a number of notes; did you include the liabilities of the latter company as those of Smith?

A. Yes, sir.

Q. Where do you find Smith's obligations on that record?

A. Mr. Smith was the signer of a guaranty bond guaranteeing that paper.

Q. Was that this same C. J. Johnson?

A. Johnson & Company of White Rock were a corporation.

Q. Is that this same Johnson; C. J. Johnson?

A. He is interested in there. I presume it is named after that Johnson. I am not sure whether it is that Johnson or another one. We have a good many Johnsons around here.

Q. There is nothing upon this record to show Mr. Smith's liability there? A. No. **[1310]**

Q. You testify to that from your own recollection?

A. I have brought you the sheets of all of that paper that he was liable on, which I have gathered together from memory, and from the list in the book that I referred to before.

(Testimony of Edgar L. Mattson.)

Q. I find S. E. Oscarson & Company, showing that company liable upon a number of notes; nothing there to indicate the connection of Mr. Smith with the sheet or with the notes.

A. Not on that sheet; no, sir.

Q. I understood from you that he was liable upon all these notes too?

A. He was. He was the signer of a guaranty bond.

Q. By which he guaranteed payment in case of the default of the maker? A. He did.

Q. Who is Oscarson & Company?

A. It is a corporation of White Rock, South Dakota.

Q. You understood Mr. Smith to be interested in that? A. I do.

Q. Do you also understand him to be interested in Johnson & Co.? A. I do.

Q. What was the business of those two corporations?

A. Johnson & Company, I think, is a mercantile concern, and Oscarson is in the grain business; a grain elevator and agricultural implements I think.

Q. I notice that these liabilities extend to as late as November 23d, 1908; when was it that the Northwestern National Bank took over the business of the Swedish-American? A. November 28th, 1908.

Q. A few days after these obligations were made, November **[1311]** 23d, 1908?

A. Yes, a few days after that particular note was made, but that is a renewal of one that matured just

(Testimony of Edgar L. Mattson.)

ahead of it. This note was taken November 23d, 1908, and it paid one for a like amount which had been taken on October 26th, 1908, and that in turn was a renewal of one that preceded that, and so on.

Q. In reaching the amount of Mr. Smith's liabilities on these several sheets, did you refer to the date October 31st, 1908, to ascertain that, or can you ascertain from each column?

A. The list that I had here, I was taking it as of the date February 14th. My evidence regarding the other, I substantiate the contract which I at that time knew to be correct.

Q. You didn't attempt to figure it up here?

A. No.

Q. For instance, on October 31st, 1908, what was Mr. Smith's liability upon this sheet of Oscarson & Company? A. $9,000.

Q. That $9,000 was the liability at that time?

A. Of the Oscarson & Company.

Q. Those preceding it had been extinguished. Those entries preceding, all notes preceding the date of October 31st, 1908, do I understand you had been cancelled and settled; paid?

A. The notes that we held on October 31st, amounting to $9,000, represent renewals of the notes that were in our hands on previous dates. I would have to follow out the line on each particular note to find out when it originated, if that is what you desire.

Q. No, I don't care about that. Now, I look at the list of liabilities of the Northwestern Compoboard Company, and I find that they incurred a num-

(Testimony of Edgar L. Mattson.)

ber of liabilities to the bank as **[1312]** maker, and the sheet contains no indication that there was any endorser, or guarantor or anything else.

A. Mr. Smith was liable on that paper as endorser or guarantor.

Q. Well, if he was an endorser you would have indicated it there, would you not?

A. No. I stated before that I had a complete list in the back of the book showing the separate lines on which he was liable.

Q. I understand you have a list in the back of the book, but some of these sheets here contain a memorandum that he is an endorser, and others do not.

A. That list showed Mr. Smith's own sheet.

Q. As endorser and maker?

A. Yes, and then the additional sheets of the concerns on which he was liable.

Q. Yes, but the C. A. Smith sheet does not attempt to show this.

A. No. There were so many transactions we gave them separate sheets.

Q. What I am trying to get at is, it appears that at one time you kept your books or your sheets showing a memorandum of the fact that he is an endorser, and in others on which you say he may be an endorser you don't indicate.

A. The sheet itself does not show it, no.

Q. Some of these sheets do show it?

A. The only sheet that shows it is his own sheet.

Q. Well, this malt company shows it too, don't it?

(Testimony of Edgar L. Mattson.)

A. Well, the reason for that is that the malt company line had notes with different endorsers; they were all endorsed by the manager of the corporation, Mr. Maunsell, some of them were **[1313]** endorsed by Mr. Smith, some of them were endorsed by Mr. Johnson, some of them were endorsed by Mr. Amsden, and in some cases Amsden and Johnson were joint endorsers.

Q. Was that the reason for indicating it?

A. The reason that Smith's name is indicated on the Lauritzen sheet is on account of the list showing Smith's liability. That distinguished the notes on which he was liable only.

Q. Now, I wish you would just tell the reporter how much Mr. Smith was liable for personally there, and not as endorser or guarantor?

A. Your question is on notes on which he was maker?

Q. Yes, on which he was maker.

A. At what time, Mr. McCourt?

Q. Well, on February 14th, 1908, and on October 31st, 1908, and on November 28th, 1908.

A. On February 14th, 1908, he was liable as maker in the sum of $68,540; on October 31st he was liable as maker for $68,540.

Q. November 28th?

A. November 28th, $19,721.18.

Q. Was he an officer, or do you know, of this Lauritzen Malt Company?

A. I think he was not an officer.

Q. A stockholder? A. A stockholder.

(Testimony of Edgar L. Mattson.)

Q. Do these minutes anywhere show—I refer to the minutes of the Swedish-American National Bank—show the acquisition or delivery to the bank of the $400,000 in bonds of the C. A. Smith Timber Company? A. I think not.

Q. Do you remember whether or not there was a collateral agreement of pledge, or of collateral, with that $400,000 of C. A. Smith bonds?

A. There was.

Q. Have you got that here?

A. I don't know. It may be in **[1314]** the custody of the Northwestern National Bank; it may be in some of the old files. I couldn't say. We took a general pledge from every borrower who put up collateral.

Q. A pledge of security? A. Yes.

Q. That is, you took a written pledge; was it a printed form? A. A printed form, yes.

Q. Did you have a printed form in this case?

A. I think so.

Q. Showing what it secured?

A. No, it didn't specify what it secured. It secured any and all indebtedness of the maker or endorser. It was a general form of collateral agreement. We used those in all instances.

Q. You have authority under those to use any collateral in your possession? A. Yes, sir.

Q. For the payment of any obligation to the bank? A. Yes, sir.

Q. You do take special collateral contracts sometimes, don't you?

(Testimony of Edgar L. Mattson.)

A. If we took real estate or something of that kind we would.

Q. Do you still hold that stock as collateral; that same stock?

A. What stock do you refer to?

Q. The Linn & Lane Timber Company.

A. The Northwestern National Bank holds it, yes.

Q. They do hold it? A. Yes.

Q. The indebtedness has been greatly reduced?

A. It has been somewhat reduced.

Q. Do you hold the C. A. Smith Timber Company stock that appears in there?

A. The C. A. Smith Timber Company stock?

Q. 300 shares of the C. A. Smith Timber Company stock? **[1315]**

Mr. UELAND.—No, it was the Linn & Lane.

A. Mr. McCourt says Smith Timber Company stock. We had Smith Timber Company bonds. We didn't have any stock.

Q. The matter I referred to appears on page 307, where you apparently held 300 shares; it may have been 300 shares of the Linn & Lane Company.

A. Yes.

Q. It seems to refer to the C. A. Smith Timber Company, Marshfield, Oregon, there.

Mr. UELAND.—That is the timber bonds.

Q. That is the way it reads.

A. Come to think now there is a mistake in that record. That stock was the Linn & Lane Timber Company stock.

(Testimony of Edgar L. Mattson.)

Q. You never held any stock then of the C. A. Smith Timber Company of Marshfield, Oregon?

A. No, sir,—well, you say never held it. As far as I know we never did.

Q. When with reference to the time of the amalgamation of the banks did you receive the $400,000 of bonds of the C. A. Smith Timber Company?

A. Well, necessarily before that time.

Q. Yes, but how long before?

A. That I can't say. I don't know.

Q. Hadn't held them very long, had you?

A. Oh, not any great period, no. Sometime during the year 1908.

Q. Now, what had you held as collateral to Smith's obligations prior to that time; say April, 1908?

A. Well, it is possible that we may have had that Linn & Lane Timber Company stock at that time which we are just referring to here. I don't know when we first received that. That was some time in 1908. **[1316]**

Q. Well, you made no examination of the company's records to ascertain what property it owned?

A. Examination of the company's property?

Q. Yes. A. At what time?

Q. At the time you took that first stock, or at the time you took those bonds.

A. We were familiar with the bonds. We didn't need a personal examination.

Q. Well, at the time you took the stock; that 300 shares?

(Testimony of Edgar L. Mattson.)

A. No. I presume we had some financial statements. We didn't examine their property.

Q. You had the statement of Mr. Smith?

A. A statement furnished by Mr. Smith.

Q. You didn't know that it had none of its deeds on record?

A. No. In fact I don't know absolutely that we had a statement. As a matter of fact the collateral of Mr. Smith was handled by our Mr. Werner, the President of the bank, who is now dead, and I don't profess to be very familiar with that part of the transactions, except as recording officer on those contracts, and being present at the meetings.

Q. You didn't know anything about what Mr. Werner understood of the matter?

A. No, I don't. I don't know as to that, what information he had at the time he took it, or what examinations he may have caused to have been made, or whether he had any examinations or not. I don't know.

Q. As a matter of fact the bank regarded Mr. Smith as entirely safe, and the collateral was a mere matter of form any way?

A. Well, I can't say that. We asked for the collateral. **[1317]** If you will read those records you will find that there is quite a little question about delivering up some of the collateral he wanted returned. A difference of opinion in the Board of Directors as to whether it should be delivered or whether it should not.

Q. Well, that was just at the time the exchange of collateral was proposed? A. Yes, exactly.

(Testimony of Edgar L. Mattson.)

Q. And were you a director at that time?

A. I was.

Q. Were you as a director apprised of the fact that there was a suit involving these identical lands, or part of them, pending at that time in Oregon?

Mr. UELAND.—What time do you refer to?

Mr. McCOURT.—I refer to October 31st, when that agreement was made, or about that time.

A. I had read in the newspapers and heard some general conversation about the question of certain lands. I didn't know what they were.

Q. That was the thing that led to the discussion in the Board of Directors as to whether or not they would surrender the bonds for the stock of a company whose lands, or a portion of them, were being attached by a suit, was it not?

A. No. The reason was that Mr. Smith had a large amount of obligations, was having difficulty in meeting them, wanted more money, was borrowing where he could, and that was what led the bank to want to be protected. He owed the bank quite a large sum, and it was the duty of the directors to protect the bank.

Q. Yet, you did deliver up $400,000 worth of bonds— **[1318]**

A. When we received—

Q. For 225 shares of the stock of a corporation whose title to a portion of its land was being attacked by the Government at the time.

A. We delivered the bonds in exchange for a majority control of the Linn & Lane Timber Company.

(Testimony of Edgar L. Mattson.)

Q. But you already had 300 shares of the stock?

A. Yes, but it didn't give us control. We got enough more to give us the control.

Q. Did you call on the companies for any collateral? A. On the companies?

Q. Yes, for which Mr. Smith was endorser at that time for the larger part of this indebtedness, in fact four-fifths of it.

A. We called on Mr. Smith for the collateral.

Q. Why didn't you call on the companies?

A. We were satisfied with what we received from him.

Q. What?

A. We were satisfied with what we received from him.

Q. But why did you compel the endorser or guarantor and not the original maker or obligee on the instrument, to furnish collateral?

A. When we dealt with Mr. Smith we were dealing with him individually and as an officer of these various corporations.

Q. I understand, but Mr. Smith only owed you $68,540, which he was amply able to pay and he was endorser upon a large quantity of paper, something like $300,000, or nearly $300,000 of the paper of other people who were primarily liable upon that paper and he only secondarily, and yet, you called upon the endorser and didn't call upon the makers at all. **[1319]**

A. I think we called on him as the officer of the corporations, and him individually. He furnished

(Testimony of Edgar L. Mattson.)

the collateral, but it was taken—you have all the papers, and that was what we had there, it was given by him, and satisfied us.

Q. Yes, but you would have been equally satisfied without any collateral from him if you had got collateral from these original makers, wouldn't you?

A. We wanted collateral on all of it.

Q. Yes, you did, but you didn't call on the other people, of whom there was a half a dozen or more, did you?

A. Well, we considered it all Mr. Smith, these corporations, except one or two, a few small matters, and we had to deal with Mr. Smith in all of these corporations. They were corporations in which he was an officer. We were dealing for the purpose of protecting all the paper, and that is what he gave us. He came forth to protect it.

Q. But you didn't get any paper from any of these institutions which he was endorser for?

A. No, I think not.

Q. Nor neither did you call for any?

A. As I have said, I didn't have anything to do with the actual negotiations, as to whether Mr. Werner asked Mr. Smith personally, or Mr. Smith as president of a corporation, or how he did it. I presume he called on Mr. Smith, as he appeared in the companies, and said, "We want these lines protected," and Mr. Smith protected them, the same as naturally we would know, for instance, if we called on Mr. Trabert, that he would speak to Mr. Smith to come forth and make arrangements. He was the

(Testimony of Edgar L. Mattson.)

man we looked to as the principal. **[1320]**

Q. As to the C. A. Smith Timber Company, or the Lumber Co.?

A. Yes, to protect all of the corporations in which he was an endorser.

Q. Well, as to the Lauritzen Malt Company, for instance, he was neither an officer nor a director in that company.

A. Well, you asked me if he was, and I said I thought not. I don't know. I am not sure about that. He may have been an officer and a director. I can't remember. He was a stockholder. I know that.

Q. Now, were those collateral bonds put up there of the C. A. Smith Timber Company to secure Johnson's indebtedness?

A. I can't say that they were. I don't remember. I think they were.

Q. How did you happen to call on Mr. Smith to secure Johnson's indebtedness?

A. Mr. Smith and Mr. Johnson were associated in business and what interested one interested the other. If anything happened to destroy the credit of Mr. Smith it would destroy the credit of Mr. Johnson, and hence we considered it the same.

Q. Well, do you recall that there was anything in that arrangement by which it was sought to put the bank in which you were a director in some way in the position of claiming some interest or equity in the lands in controversy in these suits? A. No.

Q. By holding the stock?

(Testimony of Edgar L. Mattson.)

A. Nothing that I ever heard of.

Q. Didn't you understand that that had something to do with it at the time? A. No. **[1321]**

Q. What?

A. No. We knew that there were, as I stated before, some timber lands that the papers had mentioned, etc., that were in question, and—

Q. Who was the attorney for your bank at that time?

A. Mr. Ueland. We found—I can remember personally that a statement was made to us—I don't remember how much the number of acres of land was that the corporation owned. I don't remember in detail. I know there was some discussion on it. We assumed that the corporation owned the land, and that it owned enough to protect us.

(By Mr. UELAND.)

Q. What was the date of Judge Werner's death?

A. February 24th, 1910.

Mr. UELAND.—With the consent of the District Attorney I will make this statement, which the District Attorney has been so courteous as to not require me to make under oath, and to be considered as if made under oath. On one of the first days in April last while Mr. Lind and I were preparing to go out to Portland, Oregon, to attend the taking of testimony in these cases, I called on Mr. C. J. Swanson and asked him if he would let me take a certificate of stock of the Linn & Lane Timber Company, which I understood that he was holding, for the purpose of taking it with me out to Portland, as I might

find use for it in the taking of the testimony out there, and that I would be responsible for it and see that he got it back; and upon that request he handed me a certificate which I now produce. This certificate has since been **[1322]** in my possession. I intended to have Mr. Swanson called as a witness on this hearing, but upon telephoning to his house last night, I was informed that he had gone to Winnipeg, Manitoba, and that he was out of my reach to-day. That is the reason that I am forced to make this statement instead of calling him.

Mr. McCOURT.—The statement and the certificate of course are objected to as incompetent and immaterial, and for the other reasons heretofore given in former objections to this class of testimony, and testimony offered for this purpose.

Mr. UELAND.—But as I understand it, the District Attorney waives my being sworn to the statement.

Mr. McCOURT.—Yes.

Mr. UELAND.—By consent of counsel on both sides, the certificate, together with the assignment on its back, are read into the record, and are as follows.

"Incorporated under the Laws of the State of Minnesota.

Number 7. 10 Shares.

LINN & LANE TIMBER COMPANY.

Capital Stock $100,000.

This certifies that Charles A. Smith is the owner of Ten 00/100# —— Shares of ONE HUNDRED DOLLARS each of the Capital Stock of LINN & LANE TIMBER COMPANY transferable only on

the books of the Corporation by the holder hereof in person or by Attorney, upon surrender of this Certificate properly endorsed.

IN WITNESS WHEREOF, the said Corporation has caused this Certificate to be signed by its duly authorized officers and to be sealed with the Seal of the Corporation **[1323]** at Minneapolis, Minn., this 27th day of February, A. D. 1908.

C. A. SMITH,
President.

VERNON A. SMITH,
Secretary.

SHARES
$100
Each.

(Linn & Lane Timber Company, Minneapolis, Minn., Corporate Seal.)"

(Endorsed on back:)

"Certificate for 10 shares of the Capital Stock of Linn & Lane Timber Company issued to Charles A. Smith. Dated Feb. 27, 1909."

"For value Received I hereby sell, assign and transfer unto Charles J. Swanson 10 shares of the Capital Stock represented by the within certificate, and do hereby irrevocably constitute and appoint ————to transfer the said Stock on the books of the within named Corporation with full power of substitution in the premises.

Dated Feb. 28th, 1908.

C. A. SMITH.

In presence of:

CHARLES L. TRABERT.

NOTICE.—The signature of this assignment must correspond with the name as written upon the face

of the certificate in every particular, without alteration or enlargement or any change whatever." **[1324]**

Mr. UELAND.—Mr. Lind and I have been in doubt as to the ethics of the matter as respects calling upon Mr. Lind as a witness, in view of the fact that he is counsel in this case. We have concluded that we think he ought to be sworn with reference to a certain matter that came to his attention in connection with the incorporation of the Linn & Lane Timber Cmpany, and in accordance with that conclusion I ask to have Mr. Lind sworn.

[Testimony of John Lind, for Defendants.]

JOHN LIND, after being first duly sworn, testified as follows in answer to questions by Mr. Ueland:

Q. Your full name is John Lind? A. It is.

Q. And your age is what? A. 56.

Q. You live in Minneapolis? A. I do.

Q. Have lived in Minneapolis about how long?

A. Some over ten years.

Q. Your profession is what? A. Lawyer.

Q. Do you know Mr. C. A. Smith? A. I do.

Q. Have known him for a number of years I suppose?

A. Oh, I think upwards of 30 years. More intimately in the last 15 to 20.

Q. Are you the John Lind that appears to have been one of the incorporators of the Linn & Lane Timber Company? A. I am.

Q. Did you have anything to do with the organization of that company? A. I did.

(Testimony of John Lind.)

Q. State briefly what you had to do with it.

A. The organization of the Linn & Lane was one of a series of corporations that were incorporated about the same time for **[1325]** the purpose of acquiring and holding timbered lands in California and Oregon in which Mr. Smith was interested. I prepared the articles in question at the instance of Mr. Smith and in consultation with him, had them published, remitted the fees to the Secretary of State, and later the fees for admission to do business in Oregon were remitted by a clerk in our office.

Q. You say at the instance of Mr. Smith this work was done? A. It was.

Q. Do you recall, Mr. Lind, any reason for naming this corporation the Linn & Lane Timber Company?

A. Well, there were several names to be selected for these corporations, and I am not sure whether I suggested the name, or Mr. Smith, but the lands that were to go into this corporation—there is a corporation at Coos Bay, holding or owning and acquiring timber tributary to the Coos Bay waters, and this was inland, not directly accessible to navigable waters, and Mr. Smith didn't intend that the corporation should start manufacturing immediately; that is why it was put in a separate corporation, and either he or I suggested that Linn & Lane, the names of the two counties in which the bulk of the timber was located, was a good, euphonious name. That is all I remember about it.

Q. The words "Linn & Lane" were chosen in the

(Testimony of John Lind.)

name with reference to Linn and Lane Counties?

A. Certainly.

Q. You were named as one of the directors in the articles of incorporation, were you not?

A. I was. That, however, was only for the purposes of organization. I temporarily held one share of stock during the formal organization of the corporation, **[1326]** but that share of stock was paid for by Mr. Smith, and I had nothing except a nominal interest in it.

Q. The minutes of the incorporators are in evidence in this case, and also the minutes of the first meeting of the board of directors; you are familiar with those minutes; the original records are before you.

A. I am familiar with them. The minutes of the incorporation, which are signed by the incorporators, are in my handwriting. I entered those at the time. The minutes of the first meeting of the board of directors I dictated for Mr. Smith's son, the young man testified to, to follow in entering the minutes and recording them. That was the first time I had seen the young man for a long time; since he was a child. I explained to him how it should be done, and requested him after he had made the record to bring it to the office for my signature and examination. I was personally present at that meeting. The first meeting.

Q. Both of the incorporators and of the board of directors? A. Yes, sir.

Q. Was that meeting held June 9th, 1906, as it

(Testimony of John Lind.)

purports to have been? A. It was.

Q. And where was it held; do you remember?

A. It was held in the private office of Mr. Smith. That is, the office of the C. A. Smith Timber Company, as described by the witness this morning.

Q. The minutes of this first meeting of the board of directors says that "Mr. Smith laid before the board deeds to the company of certain timber lands in the State of Oregon, executed [1327] by himself and wife, and a proposition to deliver the same to the company and thereby vest title to the lands therein described in the company, and accept as a full consideration for the same the entire authorized capital stock of the company, fully paid up and nonassessable," etc. Do you recall, Mr. Lind, whether there were any deeds brought before that meeting, as stated in that record?

A. There were. The deeds had been prepared under my direction; that is, I had suggested to Mr. Smith prior to the day of the meeting to prepare the deeds, and of course I formulated that proposition coming to the corporation as an offer from him.

Q. So that at the time of that meeting you knew that deeds had been prepared?

A. Yes, I saw them.

Q. You saw the deeds? A. Yes.

Q. There are some deeds in evidence here marked United States Exhibit 155, covering lands in Linn County, Defendants' Exhibit "D," covering lands in Lane County, and Defendants' Exhibit "C" covering lands in Douglas county; I will ask you whether

(Testimony of John Lind.)

or not you are able to identify those documents as the deeds?

A. I am not able to identify those documents as the deeds, for the simple reason that the deeds I simply examined cursorily, that is, the deeds that were there, and I have done that—well, at that time as often as every two or three months for Mr. Smith, and I can't say whether those are the ones.

Q. That is, you made no mark or anything of that sort for identification?

A. No. If you will pardon me, the only distinct recollection that I have on the subject of deeds—now, I had **[1328]** prepared these minutes (referring to book) of the meeting of the board of directors at my office; I dictated that before I left my office, including the proposition, and carried it over to Mr. Smith's office in my pocket, knowing that the young man was to act as secretary, for him to follow as a form; and at that time I hadn't seen the deeds; I knew there was going to be deeds made out, but whether there was to be one or two or several I didn't know; I assumed it would be all put in one deed, and my form that I dictated was in the singular, "deed," and I discovered that there were several deeds. I can't say from any independent recollection that I have now as to whether there were two or three deeds, but I remember there were several when I got to the office. After we had held the meeting, and I gave the young man my memorandum to transcribe into the record and to bring down to me after it was done, I left. I think the next day he brought it down

(Testimony of John Lind.)

for my examination, and upon reading it over I found it read I think "a deed," and I suggested to him that that was not the fact; that there was more than one deed, and I said, "Change that," and he sat down at my desk, and before I noticed it he went to work and scratched the "a," and added an "s." That is the part that I remember distinctly; and I said, "Vernon, I want you to bear in mind never to put a knife on the page of a document of this character. What you should have done, or what I would have you do in a case like this is to draw your pen through there, leaving it intact, and add the 's.' An eraser with a knife is very bad in a document of this character. Strike it out with a pen and leave it intact." Now it is that one thing that makes me remember that there was more than one deed, and nothing else. **[1329]** I can't state now whether it was two or three, but this caution that I gave the boy is very distinct in my mind, and just the minute that I looked at that I recalled it.

Q. Do you recall, Governor, whether at the time of that meeting, or before, in connection with the incorporation of the Linn & Lane Timber Company, you ascertained from Mr. Smith as to his intention of vesting all the lands in these counties in which he was interested, in the corporation, as a consideration for its stock, or only a portion of the lands that he was interested in?

A. My recollection of the conversation on that is that the Linn & Lane Company was regarded as a holding company, that is, a company to hold the

(Testimony of John Lind.)

lands; that it was not his intention that it should commence manufacturing operations immediately, or in the near future, and that it was to acquire the lands that were so located that they were not within his manufacturing sphere. Some 50,000 acres. I don't remember accurately in regard to that.

Cross-examination.

(By Mr. McCOURT.)

Q. You made no examination, Governor, of the description or title to the lands which were to be conveyed. Your function at that time was the organization of the company?

A. The organization of the company.

Q. So you had no interest in examining the sort of title it was receiving, or anything in relation to that?

A. No. Mr. Trabert, who testified this forenoon, always attended to the conveyances. I mean the making of conveyances. **[1330]**

[Testimony of Charles A. Smith, for Defendants.]

CHARLES A. SMITH, a witness produced on behalf of the defendants, after being first duly sworn, testified as follows in answer to questions by Mr. Ueland:

Q. Your name is Charles A. Smith?

A. Yes, sir.

Q. Your age is what? A. 57.

Q. Your residence is Minneapolis?

A. Minneapolis.

Q. And you have lived here for about how many years? A. About 40 years.

(Testimony of Charles A. Smith.)

Q. You are one of the defendants in these two cases? A. I am.

Q. Did you hear the testimony given here by Governor Lind? A. I did.

Q. And by Mr. Trabert? A. I did.

Q. (Showing witness papers.) I call your attention to a document marked "United States Exhibit 155," a document marked Defendants' Exhibit "C," and a document marked Defendants' Exhibit "D," and I call your attention to the minutes of the Linn & Lane Timber Company of the meeting of its directors, held on June 9th, 1906, referring to certain deeds which were laid before the meeting and which you offered to deliver to the company in exchange for the stock of the corporation; what deeds do those minutes refer to; what deeds were before that meeting that you offered to give to the company in exchange for the stock of the corporation?

A. These three deeds.

Q. Do you remember going abroad in the spring of 1906? A. I do. **[1331]**

Q. When did you go?

A. I left here about the 11th or 12th of June. I sailed from New York on the 16th.

Q. How long did you remain abroad?

A. Until October.

Q. So you were practically away from the 11th of June until some time in October, 1906?

A. Yes, sir, until about the first of October.

Q. In Europe? A. Yes, sir.

Q. (Showing witness paper.) I call your atten-

(Testimony of Charles A. Smith.)

tion, Mr. Smith, to certificate of stock number seven, in the Linn & Lane Timber Company, for ten shares, dated February 27th, 1908, and assigned by you to Charles J. Swanson under date of February 28th, 1908, and I will ask you to state what that was assigned to Mr. Swanson for?

Mr. McCOURT.—I object to that as immaterial and irrelevant.

A. It was assigned as collateral security for a loan.

Q. How large a loan? A. $5,000.

Q. State whether or not Mr. Swanson still holds that certificate; that is, whether he still holds it as a pledge for a loan, or whether he has returned it?

A. He does.

Q. He still holds it? A. Yes, sir.

Q. Is that loan of $5,000 for which it was pledged still unpaid? A. It is still unpaid.

Q. Will you please state, Mr. Smith, without going too much into detail, whether there was anything unusual in the financial situation in the winter of 1908? A. I believe there was.

Q. Was that true of 1907?

A. The latter part of 1907, yes, sir. **[1332]**

Q. Will you please state briefly what that situation was, and how it affected you with reference to your credit and outstanding obligations?

Mr. McCOURT.—I make the same objection to that as I have to the other testimony.

A. I was a heavy borrower, owing a great deal of money during the latter part of 1907 and the

(Testimony of Charles A. Smith.)

early part of 1908, and on account of the financial flurry I found myself unable to borrow as much money as I needed, and in many cases to renew obligations which I had.

Q. Did that situation have anything to do with the giving of the stock of the Linn & Lane Company as collateral? A. It did.

Q. Is that true both as to Swanson and as to the Swedish-American National Bank?

A. Yes, sir.

Q. Was that the reason for the pledge of the 300 shares to the Swedish-American, as well as for the subsequent pledge of the majority of the stock?

A. Yes, sir.

Q. It appears from the evidence already in that the Swedish-American National Bank had held $400,000 face value of the bonds of the C. A. Smith Timber Company of Marshfield; that was the fact, was it? A. Yes, sir.

Q. Do you remember when that bond issue was made? A. The first of April, 1908.

Q. Secured on what lands, broadly speaking?

A. Lands located in Southwestern Oregon, and some in California.

Q. Lands in which you were so interested as to control them? **[1333]**

A. Yes, sir.

Q. Either directly or through corporations that you controlled? A. Yes, sir.

Q. Did you ever have any intention of pledging

(Testimony of Charles A. Smith.)

the lands in controversy here to secure those bonds?

A. No, sir.

Mr. McCOURT.—This is all subject to my objection.

Q. As to the lands here in controversy, is or is it not a fact that while the legal title stood in Judge Werner they were mortgaged for $40,000?

A. That is a fact.

Q. And the mortgage held by the First Trust & Savings Bank of Chicago? A. That is a fact.

Q. And is it not a fact that before these Government suits were commenced you paid that mortgage and cleared those lands? A. Yes, sir.

Q. When did you begin, Mr. Smith, to become interested or engaged in the acquisition of timber lands on the Pacific Coast? A. In 1900.

Q. About what time?

A. In the spring of 1900.

Q. During the early part of 1900 were timber lands out there on the coast acquired by scrip of different kinds? A. Yes, sir.

Q. Did you acquire to a considerable extent timber lands by scrip during the early part of 1900?

Mr. McCOURT.—That is objected to as immaterial.

A. Along during the later spring and summer we did.

Q. What was the value of scrip such as could be used in getting Government lands at that time?

A. In January, 1900, I was offered scrip in large blocks, that is, 10,000 acres or more, **[1334]** at

(Testimony of Charles A. Smith.)

$2.35 an acre.

Q. As a matter of fact, what did the scrip cost you that you actually acquired?

A. My recollection is that the first scrip we bought cost us $3.25. I remember of buying one lot of scrip during the summer of 1900 that I paid $3.35 for.

Q. Do you remember going out to San Francisco sometime in March, 1900? A. I do.

Q. Do you remember on that trip meeting S. A. D. Puter? A. Yes, sir.

Q. Whereabouts? A. At the Palace Hotel.

Q. San Francisco? A. Yes, sir.

Q. About what time in the month?

A. About the middle of the month.

Q. Was there then some talk between yourself and Mr. Puter concerning the lands in Linn County, Oregon? A. Yes, sir.

Q. Will you please state what it was?

A. Mr. Puter claimed to have some eight or nine thousand acres of land which he offered for sale. He made representations as to the amount of timber, and its availability for logging.

Q. Now, you may tell us what those were?

A. He claimed that the lands would average 75,000 feet to the acre; that the lands were comparatively level, a splendid logging chance; the timber was a fine quality of yellow fir; that the timber was tributary to drivable streams which would make it practical to drive logs to Portland.

Q. State what further talk you had, if any.

A. Then the question came up as to the price, and

(Testimony of Charles A. Smith.)

he offered to sell these **[1335]** lands at $6.00 per acre. This was the first timber that I had figured on on the coast, that is, not the first timber that had been offered to me, but the first fir timber outside of a tract which he had offered to sell me before which nothing came out of—this was the first tract that was offered to me.

Q. By the other do you refer to some school lands that he had pledged to one Baldwin, of Appleton?

A. Yes, sir.

Q. So except those school lands pledged to Baldwin at Appleton, upon which he gave you an option dated February 8th, 1900, this is the first fir timber that was brought to your attention?

A. Yes, sir; so that I was not familiar with the stand of fir timber; I never had had any investigation made as to it, and 75,000 feet per acre seemed astounding to me.

At this point the further taking of testimony in these causes was adjourned until Friday, June 10th, 1910, at 10 o'clock A. M. **[1336]**

Friday, June 10th, 1910, Ten o'clock A. M.

Met pursuant to adjournment.

Present as before.

C. A. SMITH recalled.

Direct Examination (Resumed).

(By Mr. UELAND.)

Q. Mr. Smith, go on and give as fully as you can the conversation between you and Mr. Puter at this time in San Francisco concerning these lands in Linn County.

(Testimony of Charles A. Smith.)

A. Well, as I think I stated before, he made a price of $6.00 per acre, and I told him in substance that if the timber was as he claimed, and the topography of the country, and the streams, I would take the land. Mr. Kribs was present at the conversation, and then we had an understanding there at that time that some time in the near future when Mr. Kribs would get up into Oregon, he would go and look these lands over, and if he found the lands as Mr. Puter claimed, then I would take them. In other words, Mr. Kribs should be the judge whether the lands and everything was in accordance with the representations of Mr. Puter.

Q. At this time was there anything said concerning the title to these lands?

A. There was nothing said except this; Mr. Puter claimed that he had these lands for sale.

Q. Anything said about entries having been made under the Timber and Stone Act recently of those lands? A. No, sir.

Q. Or that they had to be proved up under any law of Congress before they could be sold; anything of that sort? A. No, sir.

Q. Have you stated as fully as you can the entire conversation **[1337]** between yourself and Mr. Puter at that time?

A. As far as I can remember. There may be some other things that a question might jog my memory, perhaps, but whatever was said, the impression that I had was that Mr. Puter either owned or absolutely controlled these lands, and was in position

(Testimony of Charles A. Smith.)

to deliver an absolutely good title.

Q. That is the impression made upon you at that time? A. Yes, sir.

Q. Had the subject of those lands been brought up between yourself and Mr. Puter before that time?

A. No, sir.

Q. This you say was about the middle of March, 1900? A. Yes, sir.

Q. How long did you stay out on the coast at that time; about?

A. Only a few days. I went out there on some other business.

Q. You went out on some other business?

A. Yes, sir; had my wife and daughter with me.

Q. And then you returned east?

A. Yes, sir. I don't think I was there over three of four days.

Q. It appears in evidence in this case, Mr. Smith, that you were registered at the Revere House, at Albany, Oregon, on May 21st, 1900; do you remember being there at Albany about that time?

A. I was at Albany about that time.

Q. And if the hotel register shows your registration at the hotel on that day, it would have been on that day? A. Yes, sir.

Q. State where you came from when you arrived there at Albany at that time.

A. I came from Portland.

Q. From Portland? A. Yes, sir. **[1338]**

Q. And had you stayed there at Portland any time, or where did you come from before?

(Testimony of Charles A. Smith.)

A. Why, I think I might have been in Portland perhaps three or four days. I am not sure about that. I could tell exactly when I left home.

Q. About when did you leave home?

A. I say if it is important I could look up and tell exactly when I left home.

Q. I don't think that is specially important, but state as nearly as you can whether you had come from the east shortly before?

A. Yes, that is my recollection.

Q. Where did you meet Mr. Puter on that trip first? A. At the hotel at Albany.

Q. At the hotel at Albany? A. Yes, sir.

Q. You had not met him at Portland?

A. No, sir.

Q. Nor before you arrived there at Albany?

A. No, sir.

Q. Had you met Mr. Puter between the time you saw him at San Francisco in March and this time when you met him at Albany? A. No, sir.

Q. Between those times had there been any communications between you and Mr. Puter concerning the acquisition of these Linn County lands?

A. No, sir.

Q. What transpired concerning the lands in controversy after you arrived at Albany on May 21st and met Mr. Puter?

A. Well, the day following we went up into the woods, and as I was told onto some of these lands.

Q. What did you learn concerning the lands, and as to what had been done as respects obtaining the

(Testimony of Charles A. Smith.)

lands at that time?

A. Well, I learned that a certain amount of the lands had **[1339]** been secured, and I learned also that these lands, instead of being patented lands as I supposed, that the lands had been proved up on. I learned then for the first time that mortgages had been taken on the lands—

Q. By Kribs?

A. Yes, sir; and that there had been some controversy with the Northern Pacific Railroad between some of the entrymen, or Mr. Puter, or whoever was in interest; I don't remember, in regard to some lands, which reduced the acreage, the original acreage that was talked by Mr. Puter.

Q. What was the original acreage talked by him?

A. My recollection is somewhere about 9,000 acres. Eight to ten thousand acres, something like that.

Q. Previous to this time when you met Puter on May 21st, and visited the lands, had you known anything about Kribs having taken the mortgages for money advanced towards proving up?

A. No, sir.

Q. And previous to that time, had you learned or heard anything about any contest between the Northern Pacific Railroad Company and the entrymen? A. No, sir.

Q. And previous to that time, had you known anything about the title of those lands, that is, as to whether they were patented lands or not patented lands?

(Testimony of Charles A. Smith.)

A. I don't think I had. I am not absolutely positive about that.

Q. You are not absolutely positive about that?

A. I am not, but I don't think I had.

Q. After that trip that you have referred to in which some of the lands were visited, what did you and Mr. Puter do; where **[1340]** did you go?

A. Why, I went back to Portland, and after a few days, as I remember—I think really what you refer to, shortly after, a few days after we returned, we went to Humboldt County overland, over Grant's Pass, Mr. Puter and his family, Mr. Kribs and his family and myself.

Q. And was it after you came to Humboldt County that the first contract between you and Mr. Puter for the purchase of the Redwood lands was entered into?

A. Yes, sir. Now, if I had the contract I could tell.

Q. I have it here and I will show it to you.

A. I had one contract with Mr. Puter made in Portland, and another one in San Francisco, and I am not sure whether the first one was in San Francisco or in Portland. I think, however, it was in San Francisco, after we had been at Eureka. I think that contract was made either in Eureka or in San Francisco.

Q. You refer now to the first contract?

A. The first contract.

Q. The first Redwood contract for Humboldt County lands, dated May 31st, 1900?

A. Yes, sir. I can't remember that any contract

(Testimony of Charles A. Smith.)

was made in Eureka, but the time was so short there that it seems possible. I know we had one contract made in San Francisco, and one in Portland, and I don't remember of but two contracts. It is possible that this contract was made in Portland before we went down. I am not positive about that.

Q. Well, that is not material. At any rate, the business transaction between you and Mr. Puter concerning your acquisition of Redwood lands in Humboldt County was subsequent to this meeting between you on May 21st, 1900? A. Yes, sir [1341]

Q. And previous to May 21st, 1900, you had had no dealings with Mr. Puter except getting the option of February 8th, 1900, for some school lands that he had pledged to Mr. Baldwin of Appleton?

A. No other dealing; no, sir.

Q. No other business?

A. In fact I had never seen Mr. Puter at any time, or known that there was such a man living, until the 7th or 8th of February, 1900, and the second time in San Francisco the middle of March, the 14th or 15th of March, and the third time when we met at Albany.

Q. It is in evidence in this case, Mr. Smith, that the lands in controversy in suit No. 3320, were conveyed to John A. Willd; will you state if you know at whose direction that was done?

A. My direction.

Q. Given to whom? A. Mr. Kribs.

Q. At the time when those lands were so conveyed to Mr. Willd, at your direction, did you believe that

(Testimony of Charles A. Smith.)

the parties deeding the lands, the several grantors, could lawfully convey those lands?

Mr. McCOURT.—I object to that as incompetent. The belief of the witness asserted at this time, not being competent evidence. The facts and circumstances under which the transaction was made, and the acts done being the best evidence of the character of the transaction.

A. I certainly did.

Q. Did you at the time of the conveyances of those lands to Mr. Willd believe that the several grantors had a right to convey the lands to him?

A. I certainly did. I believed **[1342]** that the grantors or grantor had an absolute perfect title.

Q. Did you at that time or at any time previous to the issuance of the patents of those lands know that any of the grantors of any of the lands involved in this suit No. 3320 had in any way violated any Act of Congress in entering those lands? A. I did not.

Q. It appears in the evidence in this case that those lands were paid for at the rate of $5.25 per acre, or thereabouts; is that a fact? A. That is a fact.

Q. Was or was not that price at that time the fair and reasonable value of those lands?

A. We considered it so.

Q. How?

A. I say I considered it so from what little information I had had.

Q. Well, according to your best judgment was it or was it not? A. Yes, sir.

Q. Did you or did you not act in perfect good faith

(Testimony of Charles A. Smith.)

in purchasing those lands and having them conveyed to Mr. Willd?

Mr. McCOURT.—The question is objected to as incompetent, the question of good faith being one for the Court.

A. I did.

Q. Mr. Smith, you are aware that suit No. 3319 involves the title to, I think, 17 quarter sections of land in Linn County, in Township 14, Range 2 and 3, I believe, conveyed by several parties in the fall of 1900 to Mr. Kribs; you are aware of that?

A. Yes, sir.

Q. In the bill of complaint it is charged that the parties conveying those lands had entered them during the *d*ummer of 1900, **[1343]** under some alleged contracts with George R. Mealey, O. Judd Mealey and John A. Thompson; from what I now call your attention to you know the lands I refer to, do you not?

A. Well, I don't know by the descriptions.

Q. But you know otherwise?

A. I know there is a suit regarding a lot of lands, 17 quarter sections, yes, sir, but I don't remember the descriptions.

Q. Now, Mr. Smith, I will ask you to state what, if anything, you had to do with the purchase of those lands? I mean personally.

A. Absolutely nothing, as far as the Mealeys or the entrymen were concerned.

Q. Absolutely nothing?

A. Absolutely nothing.

Q. When did you first know of the negotiations

(Testimony of Charles A. Smith.)

for the purchase of those lands?

A. When Mr. Kribs came to us with the lands.

Q. Was that after the lands had been conveyed to him? A. That is my recollection, yes, sir.

Q. Well, sometime after those lands had been conveyed to Kribs that fact was brought to your attention by him, and you gave credit, did you, for the money that he had used in buying those lands?

A. Yes, sir.

Q. Do you remember now, the cost, about?

A. I do not.

Q. It appears in testimony that some of those were bought, I think, at $4.75 per acre, and some at a little over $5.00; I forget now, exactly; can you remember in a general way whether that was about the price paid?

A. Somewheres about that.

Q. At the time when you learned of those lands having been [1344] purchased by Kribs as you have stated, did you believe that the grantors had the right to convey those lands? A. I did.

Q. And that their conveyance gave good title?

A. I did.

Q. Did you at that time have any notice or knowledge of any infirmity in the title of those lands on the part of the grantors? A. I did not.

Q. Or did you at that time have notice or knowledge of any violation on the part of any of the grantors of any Act of Congress in entering those lands? A. I did not.

Q. Was the amount paid for those lands a full

(Testimony of Charles A. Smith.)

and fair value for them? A. I think so.

Q. At that time? A. I think so.

Q. It appears in evidence that Mr. Kribs, after having acquired the title, conveyed an undivided one-fourth of these lands to Charles J. Swanson, and an undivided three-fourths to yourself; was that at your direction? A. Yes, sir.

Q. Mr. Smith, did you sometime after the purchase of these lands—and I refer now to the lands affected by both these suits,—ascertain that the issuance of the patents had been suspended?

A. I did, yes, sir.

Q. That came to your knowledge, did it?

A. Yes, sir.

Q. Can you remember about when?

A. Well, it was sometime after. Some months.

Q. Some months after the purchase?

A. Yes, sir.

Q. Were you aware from the time that came to your attention and until the patents were issued that there were some investigations and inquiries on the part of the Government concerning the [1345] validity of the entries? A. Yes, sir.

Q. State, Mr. Smith, what, if anything, you did in connection with those investigations?

A. I done nothing.

Q. During that investigation, that is, from the time the issuance of patents was suspended until the patents were issued, did you yourself, or did any one to your knowledge for you, extend any favors of any sort to any agent or officer of the Government with a

(Testimony of Charles A. Smith.)

view of facilitating or procuring the issuance of patents? A. No, sir.

Q. Mr. Smith, Mr. Puter testified in these cases that on some occasion when you and he met you suggested sending a couple of carloads of Swedes to enter lands, to which he remonstrated that it would cost too much, and so on; I will ask you whether you ever had any conversation with Mr. Puter in which you made any such suggestion?

A. No such a conversation, no, sir.

Q. At any time? A. Never.

Cross-examination.

(By Mr. McCOURT.)

Q. How long have you been engaged in the lumber business, Mr. Smith? A. 25 years.

Q. Here in Minnesota? A. Yes, sir.

Q. Have you been a manufacturer during this time? A. Yes, sir.

Q. Were you engaged at all in that business prior to the time you became a manufacturer of lumber products?

A. In the retail lumber business. **[1346]**

Q. In your lumber business have you been the owner of timber lands here in Minnesota, as well as west? A. Yes, sir.

Q. Have you owned lands in any other State except Minnesota here in the middle west?

A. Only here and in the west; the middle west.

Q. You have not owned any timber lands in the States immediately adjacent to Minnesota?

A. Adjacent to Minnesota?

(Testimony of Charles A. Smith.)

Q. Yes. A. No, sir.

Q. To what extent have you been the owner of timber lands in Minnesota, and are you the owner of timber lands in Minnesota?

A. We owned considerable timber land here at one time.

Q. Were those lands which were purchased prior to patent, some of them? A. Yes, sir.

Q. You have been engaged in purchasing lands ever since the adoption of what is known as the Timber and Stone Act?

A. I am unable to say that. I don't remember when the Act was adopted.

Q. I think it was adopted as to Minnesota in 1891, and 1878 as to the Western States.

A. I think it was somewhat later than that when we bought land.

Q. Then, during the time that you have been buying lands, it has been since the adoption or application of the Timber and Stone Act as to Minnesota?

A. We have bought some, yes, sir.

Q. Prior to the time that you came into the market in Oregon you were familiar with the terms of the Timber and Stone Act? A. Yes, sir.

Q. How long had you been associated with Mr. Kribs prior to **[1347]** 1900?

A. A few years.

Q. About how many years?

A. Possibly five or six years.

Q. In what capacity, or what had your relations been in a business way?

A. He had done some cruising for us, and bought

(Testimony of Charles A. Smith.)

some timber land.

Q. Here in Minnesota? A. Yes, sir.

Q. Before he went west at all he had made some arrangement with you as to the purchase of lands for you, had he not?

A. There was no arrangement as to purchasing, no, sir.

Q. Well, there was some understanding between you that if he saw something that you wanted he would submit it; let you know about it?

A. Yes, sir.

Q. And had he met Puter at the time you and he talked out in California, or did you introduce Puter to him? A. He had met Puter before.

Q. He, as I understand it, had met him in connection with the school lands? A. Yes, sir.

Q. Which you were contemplating purchasing from Puter there sometime prior?

A. Yes, sir, in February.

Q. It was in February, 1900, that you first had your conversation with Puter in relation to these school lands in Coos County?

A. Why, February 7th or 8th, yes, sir.

Q. Here in Minneapolis? A. Yes, sir.

Q. Did he talk to you generally about timber land conditions in Oregon at that time?

A. No, I don't think he did, no, sir.

Q. Didn't he at that time tell you there was a vast area of timber out there? A. No, sir.

[1348]

Q. That the title to hadn't gone out of the Government? A. No, sir.

(Testimony of Charles A. Smith.)

Q. You knew that any how, didn't you?

A. No, sir.

Q. Did not? A. No, sir.

Q. Do you mean to say that you didn't know that there was a lot of timber land in Oregon there until Puter talked with you about it in March later?

A. As to part of the question, I knew there was a good deal of timber in Oregon, yes, sir.

Q. And that the title to the same hadn't passed out of the Government?

A. I didn't have any knowledge on that.

Q. You didn't know anything about the condition of the titles, or how much of it had been located upon or taken? A. No, sir.

Q. Now, in this conversation that you had in March with Puter, didn't he tell you that he would require a considerable sum of money to perfect title in you to these lands? A. No, sir.

Q. Said nothing to you about furnishing money?

A. No, sir.

Q. You did know before you sent any money out there that Kribs hadn't secured any title to the lands? A. No, sir, I think not.

Q. You don't think so? A. No, sir.

Q. You knew you were not sending enough to pay for that amount of land in the first remittance you made?

A. I knew, of course, that—I didn't know as to the quantity of land.

Q. Well, you thought there would be about between eight and nine thousand acres?

A. Yes, sir. **[1349]**

(Testimony of Charles A. Smith.)

Q. At $6.00 an acre? A. Yes, sir.

Q. Didn't Kribs report to you between April 1st and April 20th, or April 13th, when you sent him a draft for $30,000, that he had examined the land?

A. Yes, sir.

Q. And that he had found that there was merely initiative entries on it and no proofs had been made?

A. He didn't give me any such information.

Q. Didn't you understand when you sent that $30,000 that it was to be used as proof money upon those lands? A. No, sir.

Q. Didn't he report to you that Puter's associate, McKinley, had been arrested in connection with the land? A. No, sir.

Q. That the Northern Pacific Railway Company was contesting the right to enter the lands?

A. No, sir.

Q. You had no information of that kind?

A. No, sir.

Q. You think Mr. Kribs neglected to report that to you? A. I had no such report.

Q. Kribs was pretty prompt in reporting matters, wasn't he?

A. I suppose he didn't consider that that was my business. I don't know. I didn't have any such information.

Q. You have always found Mr. Kribs pretty active in looking out for your interests, haven't you?

A. Yes, sir.

Q. During your entire experience with him?

A. Yes, sir.

Q. You say that the first that you learned that

(Testimony of Charles A. Smith.)

the money you had sent out there had been required to make proofs, was on May 20th when you were out there? A. Yes, sir.

Q. Kribs hadn't reported to you between April 1st and May 20th the operations that he had conducted there in your behalf? **[1350]**

A. No, sir.

Q. What did he report to you when you got out there?

A. Well, I learned at that time—that is the first information I had in regard to those controversies. It was at that time.

Q. You learned then that the Northern Pacific Railroad Company had contested all of the entries, 33 of which you had secured, upon the ground that the entries were fraudulent?

A. I think that was the report I received.

Q. And that McKinley had been arrested?

A. I don't remember anything of that.

Q. And that Puter had found it necessary to relinquish 24 of the entries? A. Yes, sir.

Q. Only leaving 33 for you?

A. He didn't say it was left for me, but 33 claims was all that was deeded to us.

Q. Did Kribs explain to you at that time that he had taken mortgages?

A. I don't remember as to that. I think possibly he may have done so.

Q. Did he say to you that the mortgages were taken on the same date the deeds were given?

A. No.

Q. Did you see the deeds? A. No, sir.

(Testimony of Charles A. Smith.)

Q. When did you first see those deeds?

A. I don't remember as I have ever seen them.

Q. When were they first sent to your office?

A. Well, that I am unable to tell.

Q. They were sent in promptly by Mr. Kribs after they were recorded?

A. Some of the lands that we buy from Mr. Kribs we **[1351]** get the deeds very promptly, and some we get them very slowly.

Q. Now, you sent Mr. Kribs $30,000 on the 12th day of April, and $5,000 upon the 30th day of April, 1900, or rather that was a sight draft on you; now didn't Mr. Kribs write you as to the necessity of the sight draft, or why he had drawn it, and explain to you anything about that?

A. I have no recollection as to that.

Q. You didn't send him any more money then until May 10th? A. Possibly.

Q. And then it was a sight draft for $40,000?

A. I have no information—no data before me to either verify or deny that.

Q. Now, didn't Mr. Kribs write to you between the times that you had sent him these sums of money as to what use had been made of them, or what progress he was making in acquiring the title to these lands? A. I don't think so.

Q. Where is the correspondence between you and Mr. Kribs from that date, say from April 1st, 1900, until November or October of the same year, or even for the entire year preceding that; have you got it?

A. No, sir.

Q. What became of it?

(Testimony of Charles A. Smith.)

A. I have not seen it for years.

Q. Well, do you know whether it is in existence or not?

A. I don't know. I will give you my surmise, but I don't know.

Q. What is your surmise?

A. My surmise is that the correspondence was sent to Mr. Kribs, and it is either in his possession or destroyed.

Q. You then have none of your correspondence between Kribs **[1352]** and yourself?

A. No, sir.

Q. Or the C. A. Smith Lumber Company?

A. During that period.

Q. Nothing that pertains to these lands?

A. No, sir.

Q. Did Mr. Kribs request that you send it to him, or how did you happen to send it to him?

A. Well, the request did not come to me, and it was not sent at my suggestion or by my instructions. I think that is all I can tell you.

Q. It was sent, however, at the request of Mr. Kribs? A. That is my understanding.

Q. Who did sent it as you understand it?

A. I can't tell you that.

Q. Somebody in your office?

A. I asked for the correspondence the other day and I was told that the correspondence was not here, hadn't been for years.

Q. Well, you did understand that sometime the latter part of 1904 or early in 1905 that correspondence was made away with by Mr. Kribs?

(Testimony of Charles A. Smith.)

A. I was told so the other day.

Q. You knew it before that, didn't you?

A. Not to my recollection.

Q. What? A. No, sir.

Q. Who in your office would have authority to send that to Mr. Kribs without your knowledge and consent?

A. Well, Mr. Trabert was the secretary.

Q. Mr. Trabert would not take it upon himself to send off a bundle of correspondence relating to a transaction of this kind without asking you about it?

A. I think so. Especially if I was not here he would. **[1353]**

Q. Do you know whether you were here or not?

A. I am away considerable of the time.

Q. Yes, but you were around here about the time that you and Puter made a certain settlement for $10,000, weren't you? A. About what time?

Q. At the time that you and Puter made a settlement for $10,000 that Puter claimed was due him.

A. Can you fix the date?

Q. January, 1905.

A. I was here in the beginning of January, 1905.

Q. But you recall a transaction in regard to $10,000 standing between you and Puter relative to the Humboldt lands, don't you?

A. Yes, sir, I recall the fact that he claimed—

Q. And that you did settle with him?

A. It was paid, yes, sir.

Q. You attended to that transaction yourself; authorized the payment of it?

A. I think so, yes, sir.

(Testimony of Charles A. Smith.)

Q. And don't you recall that it was about that time that Mr. Kribs was very anxious about this correspondence?

A. I don't recall that, no, sir.

Q. And that you were anxious about it yourself?

A. I don't recall that, no, sir.

Q. Don't recall that you had any anxiety about that? A. No.

Q. May you not have authorized the transmission to Mr. Kribs of that correspondence about that time?

A. How was that?

Q. May you not have authorized the transmission to Mr. Kribs of that correspondence about that time?

A. No, sir, I have no recollection of it. **[1354]**

Q. You would not say that you did not?

A. I have no recollection of the request ever coming to me, or that it was sent by my instructions or with my knowledge.

Q. You would not say that it was not sent with your knowledge or by your instructions?

A. Yes, I would say positively.

Q. What?

A. I know so, because the first information that I had that it was sent was only a few days ago.

Q. Didn't Mr. Ueland and Mr. Lind before they came out to Oregon ask you about that very correspondence?

A. I don't think they did, no, sir.

Q. You furnished them the correspondence between you and Mr. Puter?

A. Mr. Trabert may have done so.

(Testimony of Charles A. Smith.)

Q. What?

A. Mr. Trabert may have done so.

Q. You recall that in that Humboldt settlement you secured from Mr. Puter the correspondence between you and him?

A. I recollect no correspondence between me and Mr. Puter at the time the settlement was made, no, sir.

Q. Well, you do know now that you did get the letters from Mr. Puter which you had theretofore sent to him in regard to this transaction?

A. Yes, sir.

Q. What?

A. Yes, sir. I thought you referred to the correspondence at the time of the settlement.

Q. No.

A. You mean the previous correspondence?

Q. Yes, the previous correspondence. You said something about a loan of $40,000 that you got from the First Trust & Savings Bank of Chicago, that you paid; that loan was secured upon your credit upon a note endorsed; the note mentioned in **[1355]** that mortgage.

A. It was secured upon a mortgage.

Q. You endorsed the note? A. Yes, sir.

Q. And later paid it? A. Yes, sir.

Q. Do you recall when you paid that mortgage, Mr. Smith? A. No, I do not.

Q. Did you pay it before or after the Linn & Lane Timber Company was organized?

A. I am quite sure it was paid after.

Q. Who is Charles M. Amsden?

(Testimony of Charles A. Smith.)

A. A gentleman in this city.

Q. What is his business?

A. Grain business.

Q. You didn't secure the loan from him, did you?

A. No, sir.

Q. What did you do with those $400,000 of bonds of the C. A. Smith Timber Company after you secured them from the Swedish-American National Bank? A. Sold them.

Q. When? A. Shortly after.

Q. Was that the purpose of exchanging the securities, so that you might sell those bonds?

A. Yes, sir.

Q. What was the purpose of that issue of bonds in the first place?

A. In order to raise some money.

Q. For yourself or your companies in which you were interested? A. Yes, sir.

Q. To use out there in Oregon or here?

A. For the different interests which I have.

Q. And did you raise that money which you were liable on there at the time you made the exchange upon the credit of these bonds?

A. Well, I don't know as I understand you exactly. I don't know as I understand the import of your question.

Q. Well, you had a certain amount of indebtedness there, or **[1356]** rather you had the bonds up as a general collateral for all your indebtedness to the bank? A. Yes, sir.

Q. Was that an indebtedness that existed prior to the time the bonds were issued?

(Testimony of Charles A. Smith.)

A. Yes, sir.

Q. Or which accrued afterwards?

A. Existed before the bonds were issued.

Q. Then up to the time you secured this exchange you never had used the bonds for the purpose for which they were issued?

A. As far as they reached, yes, sir.

Q. You hadn't used this $400,000 of bonds?

A. I hadn't at the time, because they were with the Swedish-American National Bank.

Q. How?

A. I say I hadn't up to that time because they were with the bank.

Q. What security had you with the Swedish-American Bank before you gave them this $400,000 in bonds?

A. The only security they had as far as I remember was $30,000 of stock of the Linn & Lane Timber Company. Perhaps I might explain a little there in connection with that. I was a director of the bank—

Q. The Swedish-American?

A. Yes, sir, and after the panic in the fall of 1907, sometime in the fall or winter, or possibly may have been in the spring, the records will show that, it was decided by the directors that all directors or officers that owed the bank money should put up collateral security for the bank, and I put up in February—I don't remember whether the resolution was passed before the middle of February or not, but the middle of February I put up $30,000

(Testimony of Charles A. Smith.)

of the stock of the Linn & **[1357]** Lane Timber Company.

Q. What time?

A. The middle of February, 1908, and then later, after the bonds were issued—the bonds were dated the first of April, but were not issued until May. After the bonds were issued I put up $400,000 of the bonds in addition to the stock.

Q. What was the capital of the Swedish-American National Bank at that time?

A. $500,000.

Q. And afterwards were you a director also of the Northwestern National Bank?

A. No, sir.

Q. What is its capital, do you know?

A. I think it is $2,000,000.

Q. Then, the purpose of these different liabilities, or rather the reason for you appearing as endorser merely upon these instruments, was to keep within the requirements of the banking laws, that you could not borrow more than five per cent of the capital?

A. Most of the different interests I had of course were doing business there, and I was guarantor for their line of credit in most of the cases. There were one or two endorsements where that was not the fact. That is, personal endorsements.

Q. Of course, where you were liable upon the C. A. Smith Timber Company and C. A. Smith Lumber Company liabilities, it was practically your own obligation, and so regarded by the bank?

A. Under the guaranty contract, yes, sir.

(Testimony of Charles A. Smith.)

Q. And what was the fact as to Oscarson & Company and Johnson & Company?

A. I was an officer and director.

Q. Were those liabilities for moneys that were used by these **[1358]** companies, or was it money that was used by you and which it was understood that you were responsible for?

A. Money that was used by those companies.

Q. You didn't use that in any enterprise of your own? A. Not personally, no, sir.

Q. But you controlled—

A. I controlled the companies.

Q. You controlled these several companies?

A. Yes, sir.

Q. As well as the C. A. Smith Lumber Company?

A. Yes, sir, I was liable under the guaranty bond.

Q. And that Lauritzen Malt Company, you controlled that also?

A. I was president of the company and a large stockholder.

Q. And the Swedish Printing Company?

A. Yes, sir.

Q. You controlled that, also?

A. Well, I didn't control it, but I was an officer; a director and officer and large stockholder.

Q. And those moneys were used in those different concerns? A. Yes, sir.

Q. You didn't mortgage any of your lands to these banks to secure this indebtedness?

A. No, sir.

Q. Neither here nor in Oregon? A. No, sir.

Q. You merely put up the stock or bonds of the

(Testimony of Charles A. Smith.)

several companies which you were interested in?

A. Yes, sir.

Q. What sort of scrip was that that you were offered in January, 1900, for $2.35?

A. I am not positive, but my recollection is it was Northern Pacific scrip, but I am not positive as to that.

Q. Who offered it to you?

A. I can't remember that. I tried **[1359]** to look it up the other day, but it is so long ago—

Q. How is it you can remember that it was $2.35 when you can't remember who offered it to you or what kind of scrip it was?

A. I can remember distinctly because at that time, of course, I had no use for the scrip, and didn't know whether I ever should use any of it or not, or I would have bought it, because it was so cheap. We had bought a little before, as I remember it, that is, during the years previous, but very little, but at this time I had no knowledge whether I could use any scrip or not, and so I didn't take it. But afterwards, that is, during the year, in the summer or fall of the year when we found that we could use scrip, why, then I kicked myself because I didn't accept that offer. That is the reason I kicked myself because I paid 90¢ on the dollar more.

Q. The $3.25 scrip that you used in the late spring there, was that bought by Kribs or by you?

A. The $3.25 scrip was bought by Mr. Kribs for my account at $3.25. Later on in the summer, I think in August or September, I bought a batch for myself at $3.35.

(Testimony of Charles A. Smith.)

Q. Who did you buy that from?

A. I bought that from the representative of A. B. Hammond. I say it was his representative; it was his bookkeeper or clerk. Whether it was his scrip or not—

Q. Here or where?

A. In Roseburg, Oregon.

Q. Was that when you was out there in August?

A. Yes, sir.

Q. Who was the representative of Hammond there?

A. Now, I don't remember the name. If the name was suggested **[1360]** to me I would remember it.

Q. A banker?

A. No, it was his clerk; bookkeeper or confidential clerk.

Q. Did he live there in Roseburg?

A. No, sir, I think he lived in Portland.

Q. McLeod?

A. I think it is McLeod, yes, sir. I am quite sure it is McLeod. Do you know McLeod? As I remember the man he was sandy complected. It was not Mr. Joslyn. I am quite sure it was McLeod.

Q. What sort of scrip was that that Kribs bought at $3.25 for you? A. I don't remember that.

Q. Did you buy any school indemnity scrip to use?

A. No, sir, I don't think so. I have no recollection of using any in Oregon.

Q. You later used a lot of school land indemnity scrip there, didn't you, later than 1900?

(Testimony of Charles A. Smith.)

A. Well, not to my knowledge.

Q. How long did you remain out there in Linn County at the time that you and Puter went out to look over these lands?

A. We were there two nights. We left Albany on the train to Lebanon, and drove from Lebanon to Mr. Mealey's and stayed there over night; then went out onto some lands, whether the lands in these suits or not I am not sure, but I was told they were lands which were deeded to Mr. Willd, and came back to Mealey's that evening and stayed there that night, and then drove down to Albany the third day. Then I went right up to Portland.

Q. Who went out into the timber with you?

A. Mr. Kribs, Mr. Puter and Mr. Mealey as I remember it, and **[1361]** I think one or two other men, I don't remember.

Q. Mr. Thompson among them?

A. Possibly. I don't remember the names of the men. Never met the men before or since.

Q. How long did you stay in the timber?

A. Well, we stayed one day. We went out from Mr. Mealey's on horseback up into the timber and the same evening came back to Mealey's.

Q. Did you ascertain that there were other lands there that were subject to entry, or that hadn't been taken; Government lands in that vicinity?

A. I think it was on that trip that I was told that there was a good deal of vacant Government land.

Q. Some of it lying near this other land that you had acquired? A. In that district, yes, sir.

(Testimony of Charles A. Smith.)

Q. And much of which you later acquired?

A. Yes, sir.

Q. Did you ascertain at that time that Mr. Kribs had paid only $5.25 for that land instead of $6.00?

A. Yes, sir, Mr. Kribs advised me that he had bought the land for $5.25. Of course, that was before that time. Before that time in April he advised me he had bought the land.

Q. By letter or how?

A. By letter or wire, I am not sure; that he had bought the lands for $5.25, and asked me if we wanted them; advised me that the lands were not as represented by Mr. Puter.

Q. Well, wasn't it a fact that he represented that you could not get as much on account of the Northern Pacific Company butting in there?

A. No—well, he may have said something that he had bought so many acres, possibly, I don't remember as to that, but he advised me that the lands were not as represented; that **[1362]** they were not as heavily timbered, that the country was rougher, very rough and mountainous, and that the streams were not big enough to drive logs in.

Q. Well, it was as heavily timbered as Puter represented, wasn't it? You found that to be a fact later, didn't you?

A. Later when I sent my men on there I found it was very heavily timbered.

Q. Didn't he send you this word before you ever sent him any money at all?

A. This information that the land was not as represented? Yes, sir.

(Testimony of Charles A. Smith.)

Q. But that he had agreed to pay $5.25, or could get it at $5.25 an acre, and you told him to take it at $5.25 an acre?

A. I told him I would take it, yes, from him.

Q. Did he tell you how much of it you could get at that time?

A. I don't remember as to that. He may have done so.

Q. Didn't you learn when you went out there that about half of the proofs had been made just two or three days before you got there?

A. I think I did.

Q. But you say that you didn't learn from Kribs prior to that time that the proofs had not been made?

A. I am quite sure that was the first information I had as to that; when I was there.

Q. Didn't it occur strange to you that Mr. Puter should be able to handle that number of entrymen, handle 24 of them and get rid of the Northern Pacific contests? A. You mean when I was out there?

Q. Yes.

A. Well, those were things that I didn't understand. I had bought the lands then and paid for them when I got [1363] that information.

Q. You then conversed with Puter about securing the other 24 entries from the Northern Pacific in there? A. Yes, sir.

Q. And he promised to make an effort to get them for you? A. He promised to get them.

Q. At the same price?

A. I don't remember as to that. That may have been the agreement. I think so, yes. I am quite

(Testimony of Charles A. Smith.)

sure, because he reasoned that scrip of course being worth so much less than what I had paid for the land that he had no doubt at all he could get them for that price or even less.

Q. When did he say he would get them for you?

A. He said so at that time; about that time.

Q. I know he said about that time that he would get them for you but when did he agree to get them?

A. How soon he would get them?

Q. Yes. A. Why, in the very near future.

Q. Did he state that it would be better to wait until the patents had issued for the others?

A. I don't remember as to that. I don't think that there was anything said about that.

Q. Didn't you get an understanding from him that it would be advisable to wait until that time?

A. I don't remember that. The agreement was that he should get them in the very near future.

Q. Did he discuss with you the reason for having abandoned that many entries?

A. I don't remember that he told me that at all. Mr. Kribs told me that there had been some controversy.

Q. He told you what the controversy was, didn't he?

A. I don't remember as he went into details. **[1364]**

Q. Told you the Northern Pacific contested all of the entries? A. I don't remember as to that.

Q. And in order to save a portion of it, it was necessary to relinquish— A. Possibly.

Q. Necessary to relinquish 24 entries, and that

(Testimony of Charles A. Smith.)

they did relinquish them under an agreement with the Northern Pacific Company to dismiss their contests as to the balance?

A. I don't remember as to that.

Q. Don't remember whether he told you that?

A. No.

Q. You did understand that at any rate during the progress of acquiring titles to the lands?

A. I understood at this time when I come out there, which was on May 22d or 21st, if that was the day, I understood during that trip that there had been this contest.

Q. Did you meet McKinley there at that time?

A. I think not. I don't remember as I did.

Q. Do you recall going up on the boat from San Francisco with Puter to Eureka during that spring, and McKinley being with you?

A. I don't remember that. It is possible that I did.

Q. You know McKinley? A. I met him.

Q. When did you first meet McKinley?

A. I don't remember when I first met him. I don't remember as I met him on that trip. I may have met him during the summer.

Q. You did know him though in 1900?

A. I had met him during 1900.

Q. Ever talk to him about these lands?

A. No, sir. **[1365]**

Q. Did you ever meet Mr. Tarpley, Dan Tarpley?

A. No, sir, not to my recollection.

Q. How long did you stay in Roseburg during that summer?

(Testimony of Charles A. Smith.)

A. I was there two or three different times and stayed there a couple of days each time.

Q. You were there looking after your interests in the acquisition of lands in Oregon during that summer? A. Yes, sir.

Q. And you went over matters thoroughly with Mr. Kribs at the different times you went there, as to what he was doing and how he was getting along?

A. Yes, sir.

Q. Who is this man John A. Willd?

A. He is my brother.

Q. What? A. My brother.

Q. Half brother? A. He is my brother.

Q. Where did he live?

A. He lived in this State.

Q. Not here in Minneapolis?

A. At Hoffman.

Q. He was not interested with you in your timber business here? A. No, sir.

Q. Now, you say you learned a few months after April, 1900, that the Government had suspended these entries, and some protest of some kind existed?

A. Yes, I remember that.

Q. You and Mr. Kribs had considerable correspondence about that matter, didn't you?

A. There may have been some correspondence in regard to that.

Q. At least you understood the situation thoroughly, that there was a protest there as to the good faith of the entrymen? A. Yes, sir.

Q. And it was necessary to make some representations to the **[1366]** land department before pat-

(Testimony of Charles A. Smith.)

ents would issue?

A. I had some knowledge, of course, that the patents had been suspended, especially in the Puter—these lands in this suit here; in regard to the lands that came from Puter.

Q. And that it was necessary to take some action to secure patents to the lands?

A. I understood there was some controversy there. Just what it was I didn't know the details of.

Q. You understood that Mr. Kribs was employing attorneys to look after the matter, and taking such steps as he deemed proper?

A. I think I did, yes, sir.

Q. And did you know the firms that he had employed?

A. I think I did. I don't remember the—

Q. You did later along?

A. Later I understood that he had employed—

Q. Mitchell & Tanner?

A. Judge Tanner I think he told me.

Q. Before he employed Judge Tanner at all, of the firm of Mitchell & Tanner, didn't you understand that he had employed Carey & Mays at a compensation of $50.00 per claim? A. No, sir.

Q. When did you first learn about that?

A. I don't remember. Probably when his statement came in.

Q. How often did he send you statements?

A. About once a year.

Q. You understood that he was securing statements or affidavits from entrymen as to the character of the entries? A. No, sir.

(Testimony of Charles A. Smith.)

securing the titles? A. Yes, sir.

Q. You recall giving Mr. Puter a letter of introduction to Congressman Eddy from this State, in relation to these lands?

A. I think I do, yes, sir. **[1368]**

Q. You knew when you gave him that that there was trouble about the lands?

A. I knew that, yes, sir.

Q. And Mr. Kribs and Mr. Puter both explained to you what the charges were against the entries?

A. I don't remember as to that.

Q. You understood that they were being suspended upon the charge that the entrymen had had prior agreements with Puter and McKinley?

A. I don't remember that I ever knew anything about the details. I knew that the patents were hung up, as we called it, and I was urging Puter and Kribs continually to have the titles perfected.

Q. But you did understand that there was a charge that there had been an unlawful agreement between Puter and McKinley and the entrymen?

A. I don't think I so understood. I don't remember that.

Q. Well, you inquired what the reason was, didn't you? A. No, I don't think I did.

Q. You didn't want to know; you were not interested in finding out?

A. I don't think I did, because I held them responsible.

Q. I know about your holding them responsible, but you were continually putting up large sums of

(Testimony of Charles A. Smith.)

Q. What? A. No, sir.

Q. You knew they had been obtained for use?

A. No, sir. **[1367]**

Q. Didn't Mr. Puter come here and talk to you about that, and didn't he write to you about it, and telegraph you about it? A. No, sir.

Q. What? A. No, sir.

Q. You are sure of that?

A. I am very sure of that, sir.

Q. Do you remember a Government agent by the name of Stratford who was working in connection with the matter?

A. I never heard of him until I saw his name mentioned in connection with this matter.

Q. You noticed from Mr. Kribs' statement that he had been paying considerable sums of money out in endeavoring to procure these entries, didn't you?

A. There were charges for attorneys' fees and expenses, yes, sir.

Q. You didn't hold them up?

A. How is that?

Q. You didn't hold any of them up?

A. Hold any of the items up?

Q. Yes.

A. I don't remember. There may have been some possibly. I don't remember as to that.

Q. Mr. Kribs was acting in your behalf in relation to those matters?

A. I held Mr. Kribs responsible for the securing of the titles.

Q. Yes. That is you expected him to exert himself to procure them, but you stood the expenses of

(Testimony of Charles A. Smith.)

money to perfect the title; didn't that raise a query in your mind as to why you was paying out so much money to them?

A. Well, Mr. Kribs was getting lands, they were buying there, and money was put up. What the money was used for at that time I didn't know; whether the money was used for scrip or whether the money was used to buy lands from individuals, **[1369]** or corporations, or whether the money was used for paying expenses, attorneys' fees, etc., that I had no information about.

Q. But you did know in relation to these claims that you had at least one firm of attorneys that you were employing, and that Mr. Kribs was rolling up expense bills in regard to these lands that you had purchased long before?

A. Personally I had no attorneys employed. I employed no attorneys.

Q. I know, but Kribs did for you?

A. I had never met Mr. Tanner in my life.

Q. You did know he was a partner of Senator Mitchell's? A. That I knew, yes.

Q. And that Mitchell was an influential man in the United States Senate?

A. I knew that Mr. Mitchell was in the United States Senate. As to his influence I had no knowledge.

Q. Now, right after you learned that these lands were in bad shape, you had Mr. Willd convey the lands to somebody else, didn't you?

A. Yes, sir, the lands were conveyed to somebody else.

(Testimony of Charles A. Smith.)

Q. About November, 1900? A. Possibly.

Q. And that was about the time that the suspending of these patents got sort of critical in your mind?

A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. A few months later you had the land conveyed to Mr. Hubert E. Rogers? A. Yes, sir.

Q. Mr. Rogers associated with you in business?

A. No, sir.

Q. Then in December, 1904, when the Lane fraud matters got to be agitated pretty seriously out in Oregon, you had the lands **[1370]** conveyed to Mr. Werner?

A. The lands were conveyed to Mr. Werner, yes, sir. I don't remember when.

Q. How was it you didn't have these Linn & Lane Timber Company deeds recorded, Mr. Smith, that you gave to the Linn & Lane Timber Company for these lands and other lands? A. Why didn't I?

Q. Yes.

A. Well, there were several reasons; one reason was that I didn't consider it advisable to have the lands grouped in one concern, on account of the effect it would have on the values of lands. Another reason was on taxation. I find when large quantities of lands are grouped in one concern or one individual, that it seems to have quite a material effect on taxation, especially if that individual or concern is a non-resident.

Q. The fact that the Government had questioned your title, or the good faith of your title to these

(Testimony of Charles A. Smith.)

lands, and that Mr. Kribs had taken the stand in 1905 in a very prominent case out there in which he had given testimony regarding these lands, and the fact that he had paid the firm of which Senator Mitchell was a member considerable sums of money, and had delivered over to the Government numerous checks for large sums of money which he had stated had been paid to the Government officers and Government agents in perfecting the title to these lands, and which he had also paid in some instances to entrymen making affidavits for expediting these lands to patent, had nothing to do with it?

A. No, sir. I had no information as to any evidence which Mr. Kribs gave.

Q. You didn't know that Mr. Kribs had been the star witness **[1371]** out there in the Mitchell case?

A. No, sir.

Q. And that the papers for several weeks came out with scare heads asserting that Mr. Kribs had made confessions in regard to his connection with land frauds, containing his picture distorted to suit the character of his confession?

A. I had no information as to that, no, sir.

Q. You didn't know about that at all?

A. No, sir.

Q. You didn't know about this correspondence being sent out there and destroyed?

A. No, sir.

Q. Hadn't some threat been conveyed to you that you yourself might be indicted in connection with these same lands?

(Testimony of Charles A. Smith.)

Mr. UELAND.—That is objected to as not proper cross-examination, irrelevant and immaterial.

A. Not in connection with these lands. There had been some information that my name had been used quite extensively, and that possibly—or that I had been considered before the grand jury, or possibly might be considered before the grand jury; but whether it was in connection with these lands or any other lands, I don't remember that.

Q. That information you did have long prior to the organization of the Linn & Lane Timber Company, and the conveyances by you to it?

A. Some years before, yes, sir. Yes, sir, that was one reason why I didn't want to record the deeds, because I didn't care to have newspaper notoriety.

Q. Now, in case No. 3319, the records did show that you were the owner of those lands?

A. I don't remember.

Q. Prior to the organization of the Linn & Lane Timber Co.? **[1372]**

A. I don't remember as to that.

Q. Well, you recall that Mr. Kribs deeded you a three-quarter interest in those lands?

A. Yes, sir.

Q. And that that was long prior to the organization of the Linn & Lane Timber Company?

A. Yes, sir.

Q. Hadn't you your holdings in Coos County grouped under one apparent ownership prior to that time?

(Testimony of Charles A. Smith.)

A. No. It was scattered in the names of different people.

Q. What?

A. No, sir. It was scattered in the names of different people. Considerable of it in my name, considerable of it in other people's name.

Q. The bulk of it was in your name?

A. I don't remember as to that.

Q. And as a matter of fact the greater portion of those lands which you deeded to the Linn & Lane Timber Company which lay in Linn County, stood in your name quite a while prior to the organization of the Linn & Lane Timber Company?

A. A portion of them did.

Q. Well, the larger portion?

A. I don't think so, no, sir.

Q. As a matter of fact when you went up there to look at those lands it was generally knowsn in that community that you were a buyer, in Linn County, and Multnomah County too, that you were a buyer of those lands in Linn County?

A. I never owned an acre in Multnomah County.

Q. I say it was generally known in Multnomah County and Linn County that you were a buyer of lands in Linn County?

A. I am unable to affirm or deny that question.

[1373]

Q. It was also generally known that Mr. Kribs was acting largely for you in connection with purchases of lands in Oregon during the year 1900 and the years following?

(Testimony of Charles A. Smith.)

A. I am unable to answer that question.

Q. In connection with those lands, those Puter lands, some few weeks before patents issued, Mr. Puter called upon you here in Minneapolis. Do you recall that?

A. He called upon me several times.

Q. And you and he had a settlement in regard to the Humbo*lt* County lands, and at your conversation then he threatened, unless you settled with him for the Humbo*lt* County lands, that he would proceed to Washington and see that all these Puter entries were cancelled?

A. I don't remember that.

Q. Don't recall that at all? A. No, sir.

Q. You recall having quite a spirited meeting with him? A. Yes, I do.

Q. Shortly prior to the issuance of the patents in that case?

A. My recollection is that that was after he had been to Washington one trip. Whether it was before the patents were issued or after, I am not sure. I am rather inclined to think it was after the patents were issued.

Q. The patents were issued in August, 1902, and this settlement that you had was in April, 1902?

A. Well, at the time we had the settlement, I don't think we had any particular controversy. I think the principal controversy was sometime after he demanded that money and I refused to give him the money.

Q. You refused to pay him upon the ground that

(Testimony of Charles A. Smith.)

he had misrepresented **[1374]** the matter to you as to the amount of money he had paid out?

A. Well, there were other reasons.

Q. But don't you recall that prior to the time these patents issued that he made a threat that unless you did something, I don't know just what it was, that he would go to Washington and lay the whole transaction before the Secretary of the Interior or the Commissioner?

A. There may have been something of that kind. As I say, I am quite sure that the scrap was after he had been to Washington, and about the time that the last patents were issued. I am quite sure it was, because I think the argument he had was that now the patents were all issued and I still refused to pay him the money.

Q. Do you remember that after you had given him a letter of introduction to Eddy, that you telegraphed him not to see Eddy under any circumstances until you had seen him; that you had received a telegram from Fred, meaning Mr. Kribs, and he stated that he had matters working in good shape in Oregon? A. That may be.

The reading over and signing of the foregoing depositions by the respective witnesses is waived by counsel for the respective parties. **[1375]**

[Special Examiner's Certificate to Testimony, etc.]

(Title of Court and Cause.)

I, George F. Hitchcock, Jr., a Special Examiner appointed by said Court in the above-entitled cause,

do hereby certify that the foregoing depositions of Mrs. Ethel Steele, Charles L. Trabert, Edgar L. Mattson, John Lind and Charles A. Smith, witnesses produced, sworn and examined on behalf of the defendants herein, were taken by me at the time and place stated in the foregoing transcript thereof, pursuant to the order hereto attached; that said depositions were taken by me in shorthand, and transcribed on a typewriter under my direction; that the reading and signing of said depositions by the respective witnesses was expressly waived by the parties hereto; that the complainant was represented by its counsel, Mr. John McCourt, and the defendants by their counsel, Mr. A. Ueland and Mr. John Lind; that before being examined herein each of the witnesses above named was by me duly sworn to testify the truth, the whole truth and nothing but the truth relative to the issues herein.

I further certify that I am not of counsel, nor attorney for either of the parties in said depositions or caption **[1376]** named, nor in any way interested in the result thereof.

I further certify and return that on the taking of these depositions the following exhibits were identified and offered in evidence, viz.: Defendants' Exhibits "M," "N," "O" and "P"; that Defendants' Exhibits "C" and "D," heretofore identified, were also offered in evidence, and these exhibits, together with "Government Exhibits 155 to 161," inclusive, forwarded by the Clerk of the above entitled court for use in the taking of these depositions, are returned to said Clerk under separate cover.

In testimony whereof, I have hereunto set my hand this 27th day of June, A. D. 1910.

(Signed) GEO. F. HITCHCOCK, Jr.,
Special Examiner.

Filed July 1, 1910. G. H. Marsh, Clerk. **[1377]**

Defendants' Exhibit "C."

(G. F. HITCHCOCK, Jr., Special Examiner.)

THIS INDENTURE, Made this 4th day of June in the year if our Lord one thousand nine hundred and six between Charles A. Smith and Johanna A. Smith, his wife, of the County of Hennepin and State of Minnesota, parties of the first part, and Linn & Lane Timber Company, a corporation, of the County of Hennepin and State of Minnesota, party of the second part,

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of $15,000.00 *Dollars,* to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns, Forever, all the tracts or parcels of land lying and being in the County of Douglas and State of Oregon described as follows, to-wit:

The North Half of the Northeast quarter (N. ½ NE.) the Northeast quarter of the Northwest quarter (N. E. N. W.) of Section Eight (8), the Southwest quarter of the Northeast quarter (S. W. N. E.) the East Half of the Northwest quarter (E. ½ NW.) the Northeast quarter of the Southwest quarter (N. E. S. W.) the West Half of the Southwest quarter

(W. ½ S. W.) the North Half of the Southeast quarter (N. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Ten (10), the North Half of the Northwest quarter (N. ½ N. W.), the Northwest quarter of the Southwest quarter (N. W. S. W.) and the South Half of the South Half (S. ½ S. ½) of Section Eleven (11), the West Half of the Southwest quarter (W. ½ S. W.) of Section Twelve (12), the Southeast quarter of the Northeast quarter (S. E. N. E.), the North Half of the Northwest quarter (N. ½ N. W.) the Southeast quarter of **[1378]** the Northwest quarter (S. E. N. W.), the Southeast quarter of the Southwest quarter (S. E. S. W.), the North Half of the Southeast quarter (N. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Thirteen (13), all of Section Fourteen (14), the East Half of the Northeast quarter (E. ½ N. E.), the Northwest quarter of the Northwest quarter (N. W. N. W.) the North Half of the Southeast quarter (N. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Fifteen (15), the Southwest quarter of the Southwest quarter (S. W. S. W.) of Section Twenty (20), the East Half of the Northeast quarter (E. ½ N. E.) the West Half of the Northwest quarter (W. ½ N. W.) the Northeast quarter of the Southwest quarter (N. E. S. W.) the South Half of the Southwest quarter (S. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Twenty-two (22), the Northeast quarter of the Northeast quarter (N. E. N. E.) the South Half of the Northeast quarter (S. ½ N. E.) the Northwest

quarter of the Northwest quarter (N. W. N. W.), the Southeast quarter of the Northwest quarter (S. E. N. W.) and the South Half (S. ½) of Section Twenty-three (23), the Northeast quarter of the Northeast quarter (N. E. N. E.) the West Half of the Northeast quarter (W. ½ N. E.) the West Half (W. ½) and the Northwest quarter of the Southeast quarter (N. W. S. E.) of Section Twenty-four (24), the Southwest quarter of the Northeast quarter (S. W. N. E.) the West Half (W. ½), the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter (S. E. S. E.) of Section Twenty-five (25), all of Section Twenty-six (26), all of Section Twenty-seven (27), the South Half of the Northeast quarter (S. ½ N. E.) the Northeast quarter of the Northwest quarter (N. E. N. W.) the South Half of the Northwest quarter (S. ½ N. W.) and the South Half (S. ½) of Section Twenty-eight (28), the Southwest quarter of the Northeast quarter (S. W. N. E.) the Southeast quarter of the Northwest quarter (S. E. N. W.) and the Southwest quarter (S. W. ¼) of Section Thirty (30), the North Half **[1379]** of the Northeast quarter (N. ½ N. E.) the Southwest quarter of the Northeast quarter (S. W. N. E.) the Southwest quarter of the Southwest quarter (S. W. S. W.) and the North Half of the Southeast quarter (N. ½ S. E.) of Section Thirty-two (32), the North Half (N. ½) the East Half of the Southwest quarter (E. ½ S. W.) and the Southeast quarter (S. E. ¼) of Section Thirty-four (34), the North Half (N. ½) the Southwest quarter (S. W. ¼) the North Half of the South-

east quarter (N. ½ S. E.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Thirty-five (35), in Township Twenty-seven (27) South, Range Two (2), West of Willamette Meridian, containing 7740 acres more or less according to the Government survey thereof.

TO HAVE AND TO HOLD THE SAME, Together with all the hereditaments and appurtenances thereunto belonging or in any wise appertaining to the said party of the second part, its successors and assigns, Forever.

IN TESTIMONY WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year last above written.

CHARLES A. SMITH. [Seal]
JOHANNA A. SMITH. [Seal]

Signed, sealed and delivered in presence of,
ETHEL STEELE.
CHARLES L. TRABERT.

STATE OF MINNESOTA,
COUNTY OF HENNEPIN.—ss.

This certifies that on this 4th day of June, 1906, before me the undersigned, Charles L. Trabert, a Notary Public in and for said County and State, personally appeared the within named Charles **[1380]** A. Smith and Johanna A. Smith, his wife, to me personally known to be the individuals described in and who executed the same freely and voluntarily for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixes my seal the day and year in

this certificate last above written.

[Seal] CHARLES L. TRABERT,

Notary Public in and for the County of Hennepin, and State of Minnesota.

My commission expires the 30 day of Oct., 1909.

Endorsed on back:

535 7 Pd. 2.00

Deed C. A. Smith et ux. to
Linn & Lane Tbr. Co.
Douglas Co. Oregon.

State of Oregon,
County of Douglas,—ss.

I hereby certify that the within was recorded by me in Douglas County Records, Book of Deeds, Vol. 59, page 402, on the 5 day of Sept., 1908.

E. H. LENOX,
County Clerk.
R. C. Agee,
Deputy.

Filed Sep. 5, 1908. E. H. Lenox, County Clerk. By ———— Deputy Clerk.

Defendants' Exhibit "C." Filed July 1, 1910. G. H. Marsh, Clerk. **[1381]**

Defendants' Exhibit "D."

(G. F. HITCHCOCK, Spec. Exm'r.)

THIS INDENTURE, Made this 4th day of June in the year of our Lord one thousand nine hundred and six between Charles A. Smith and Johanna A. Smith, his wife, of the County of Hennepin and State of Minnesota, parties of the first part and Linn & Lane Timber Company, a corporation, of the

County of Hennepin and State of Minnesota party of the second part,

WITNESSETH: That the said parties of the first part, for and in consideration of the sum of $5000.00 Dollars, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged do hereby Grant, Bargain, Sell and Convey unto the said party of the second part, its successors and assigns, Forever, all the tracts or parcels of land lying and being in the County of Lane and State of Oregon—described as follows, to wit:

The Northeast quarter (N. E. ¼), the north half of the Northwest quarter (N. ½ N. W.) of Section Twenty (20), the East Half of the East Half (E. ½ E. ½) the Northwest quarter (N. W. ¼) the North half of the Southwest quarter (N. ½ S. W.) and the Southeast quarter of the Southwest quarter (S. E. S. W.) of Section Twenty-one (21), the North Half of the Northeast quarter (N. ½ N. E.) of section Twenty-two (22), the North Half (N. ½) of Section Twenty-three (23), the Northwest quarter (N. W. ¼) of Section Twenty-four (24) the West Half of the Southeast quarter (W. ½ S. E.) and the Southeast quarter of the Southeast quarter(S. E. S. E.) of Section Twenty-five (25), the Southwest quarter of the Northeast quarter (S. W. N. E.) the North Half of the Northwest quarter (N. ½ N. W.) the Southeast quarter of the Northwest quarter (S. E. N. W.), the Southwest quarter of the Southwest quarter (S. W. S. W.) and the Southwest quarter of the Southeast quarter (S. W. S. E.) of Section Twenty-seven (27), the Southwest quarter of the Northeast quarter (S. W. N. E.) the South **[1382]** Half of the North-

west quarter (S. ½ N. W.) and the South Half (S. ½) of Section Twenty-eight (28), all of Section Thirty (30), the North Half of the Northeast quarter (N. ½ N. E.) of Section Thirty-three (33), the West Half of the Northeast quarter (W. ½ N. E.) the Northwest quarter (N. W. ¼) of Section Thirty-four (34), the North Half of the Northeast quarter (N. ½ N. E.) the North Half of the Northwest quarter (N. ½ N. W.), the Southeast quarter of the Northwest quarter (S. E. N. W.) and the South Half of the Southwest quarter (S. ½ S. W.) of Section Thirty-five (35) in Township Fifteen (15), South, Range Three (3) East of Willamette Meridian.

The Northeast quarter (N. E. ¼) of Section Eighteen (18), Township Twenty-three (23) South, Range One (1) West of Willamette Med. containing 3371.28 acres more or less according to the Government survey thereof.

TO HAVE AND TO HOLD THE SAME, Together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining to the said party of the second part, its successors and assigns Forever,

IN TESTIMONY WHEREOF, The said parties of the first part have hereunto set their hands and seals the day and year last above written.

CHARLES A. SMITH. [Seal]
JOHANNA A. SMITH. [Seal]
_____ [Seal]
_____ [Seal]

Signed, sealed and delivered in presence of
ETHEL STEELE.
CHARLES L. TRABERT,

STATE OF MINNESOTA,
COUNTY OF HENNEPIN,—ss.

This certifies that on this 4th day of June, 1906, before me the undersigned, Charles L. Trabert, a Notary Public in and for said County and State, personally appeared the within named Charles **[1383]** A. Smith and Johanna A. Smith his wife, to me personally known to be the individuals described in and who executed the same freely and voluntarily for the uses and purposes therein expressed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixes my seal the day and year in this certificate last above written.

[Seal] CHARLES L. TRABERT,
Notary Public in and for the County of Hennepin, and State of Minnesota.

My commission expires the 30 day of Oct., 1909.

Endorsed on back:

536 6 12370

Deed

C. A. Smith et ux. to Linn & Lane Tbr. Co.

Lane County, Ore.

State of Oregon,
Lane County,—ss.

I hereby certify that the within instrument was filed for record this 5 day of Sep. 1908, at 8 o'clock A. M., and duly recorded in Book 79, page 83 Lane County Deed records.

E. U. LEE,
County Clerk.
Per C. D. Lee,
Deputy.

Fred'k A. Kribs,

2.00 330 Chamber Com. Portland, Or.

R. J. C.

Defendants' Exhibit "D." Filed July 1, 1910. G. H. Marsh, Clerk. **[1384]**

Defendants' Exhibit "M."

(G. F. H., Spec. Ex.)

PAID.

C. A. SMITH TIMBER COMPANY.

Minneapolis, Minn., Jul. 31, 1906. No. 3949.

C. A. S. T.
Co.

Pay to the order of Mrs. Ethel Steele $50.00

Not over Fifty Dollars 50

Fifty and 00/000.....Dollars.

C. A. SMITH TIMBER COMPANY.

By CHARLES L. TRABERT,

~~Vice president.~~

Secretary.

To THE SECURITY BANK OF
MINNESOTA, MINNEAPOLIS.

Endorsements:

Mrs. Ethel Steele.

Pay to the order of The Washington Trust Company

Seattle, Wash.

Wilson & White Co. Rainier

Grand Hotel.

Pay to the order of South Omaha National Bank

South Omaha, Neb.

The Washington Trust Co. of Seattle

M. D. Barnes, Cashier.

All prior endorsements guaranteed.

Pay First Natl. Bank, Minneapolis, Minn. or order,
South Omaha National Bank
So. Omaha, Neb.
H. C. Bostwick, Vice-Prest.

4 Paid through Minneapolis Clearing House 4
Aug. 11, 1906

Defendants' Exhibit "M." Filed July 1, 1910. G. H. Marsh, Clerk. By J. W. Marsh, Deputy. **[1385]**

Defendant's Exhibit "N."

(G. F. H., Spec. Ex.)

STATE TREASURER'S OFFICE, MINNESOTA.

St. Paul, May 24, 1906.

Received of Linn and Lane Timber Company Seventy-five $\frac{\#}{100}$ Dollars, Being for Fees paid in accordance with act approved (April 24, 1889,) on (~~March 18, 1899~~) original capital stock, amounting to $100,000.00.

$75.00

[State Seal] J. H. BLOCK, Jr.
State Treasurer.

Defendants' Exhibit "N." Filed July 1, 1910. G. H. Marsh, Clerk. **[1386]**

Defendants' Exhibit "O."

(G. F. H., Spec. Ex.)

THE STATE OF MINNESOTA.
DEPARTMENT OF STATE.

BE IT KNOWN, that whereas Charles A. Smith, Johanna A. Smith, and John Lind,

Have associated themselves with the intention of forming a corporation under the name of "LINN

AND LANE TIMBER COMPANY," for the purpose of buying, holding and selling timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on the same, etc., with a capital of ONE HUNDRED THOUSAND ($100,000.00) Dollars, and have complied with the statutes of this State in such case made and provided, as appears from the articles of incorporation and the affidavit of proof of publication filed in this office.

Now, therefore, I, P. E. HANSON, Secretary of State of Minnesota, do hereby certify that said Charles A. Smith, Johanna A. Smith, and John Lind, their associates and successors, are legally organized and established as, and are hereby made, an existing corporation under the name of "LINN AND LANE TIMBER COMPANY," with the powers, rights and privileges, and subject to the limitations, duties and restrictions which by law appertain thereto.

WITNESS my official signature hereunto subscribed and the seal of the State of Minnesota hereunto affixed, this Thirty-first day of May in the year of our Lord one thousand nine hundred and six.

[State Seal] P. E. HANSON,
Secretary of State.

Defendants' Exhibit "O." Filed July 1, 1910. G. H. Marsh, Clerk. **[1387]**

Defendants' Exhibit "P."

(G. F. H., Special Examiner.)

Fee Book No. 1,
Page No. 55.

Certificate of Authority—Foreign Corporation.
Corporation
No. F-341

STATE OF OREGON.
OFFICE OF THE SECRETARY OF STATE.

TO ALL TO WHOM THESE PRESENTS MAY COME, GREETING:

CERTIFICATE OF AUTHORITY TO ENGAGE IN BUSINESS WITHIN THE STATE OF OREGON.

KNOW YE, That whereas, LINN AND LANE TIMBER COMPANY, a corporation organized and existing under and pursuant to the Laws of Minnesota, with its Home Office at Number 410 Andrus Bldg. Street, in the City of Minneapolis, Minnesota, did, on the 25th day of June, 1906, file in the office of the Secretary of State of the State of Oregon, a declaration of the desire and purpose of said Corporation to engage in business within the State of Oregon, which said declaration was accompanied with a duly authenticated copy of the Certificate of Incorporation of said Corporation; has paid the declaration and annual license fees, and has complied with the requirements of "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903, preliminary to the issuing of this

CERTIFICATE OF AUTHORITY TO ENGAGE IN BUSINESS WITHIN THE STATE OF OREGON.

Now, therefore, I, F. I. Dunbar, Secretary of State of the State of Oregon, do hereby certify that LINN AND LANE TIMBER COMPANY a corporation organized and existing under and pursuant to the laws of Minnesota, has, on the 25th day of June, 1906, filed in the office of the Secretary of State of the State of Oregon, a declaration of its desire and purpose to engage in business within the [1388] State of Oregon, accompanied by a duly authenticated copy of the Certificate of Incorporation of said Corporation, satisfactory in substance and form, as required by the provisions of "An Act to provide for the licensing of Domestic Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903, showing that the full name under which it proposes to transact business is LINN AND LANE TIMBER COMPANY; that the name of the State or Country under whose laws it was organized is Minnesota; that the location of its Home Office is at Number 410 Andrus Building Street, in the City of Minneapolis, Minnesota; that the date of its formation or incorporation was the 31st day of May, 1906; that the amount of its Capital Stock is One Hundred Thousand ($100,000) Dollars; that the nature of the pursuit, business or occupation in which it is authorized to engage is to buy, hold and sell timber and other lands and tenements in the United States of America, and to conduct forestry, mining and agricultural operations on

the same; to carry on logging operations and buy, sell, store and transport logs and other forest products for itself and others; to build and operate mills for the manufacture of lumber and other wood and forest products; to construct and operate dams, sluices, ditches, flumes, chutes, booms, tramways and other appliances for irrigation and for carrying on the mining, agricultural, logging and manufacturing operations of the corporation; to develop electric energy and other power for the operation of its works and the transportation of its products and for sale. That the location of the Principal Office within the State of Oregon is at Number 330 Chamber of Commerce Street, in the City of Portland, in the County of Multnomah; that the name of its attorney-in-fact, constituted and appointed in accordance with the provisions of Section 6 of "An Act to provide for the licensing of Domestic [1389] Corporations and Foreign Corporations, Joint Stock Companies and Associations, etc.," approved February 16, 1903, is FRED J. KRIBS whose business address is Number 330 Chamber of Commerce Street, in the City of Portland, in the County of Multnomah; that the names and addresses of its principal officers, and of its directors or trustees, are as follows:

Names.	Office.	Postoffice Address.
Charles A. Smith,	President & Director,	Minneapolis, Minnesota
Vernon A. Smith,	Secretary,	" "
Johanna A. Smith,	Vice-Pres. & Director,	" "
Nann A. Smith,	Treasurer,	" "
John Lind,	Director,	" "

—that the name and address of its General Agent within the State of Oregon is FRED. A. KRIBS,

Number 330 Chamber of Commerce Street, in the City of Portland, in the County of Multnomah; and that said declaration and statement and duly authenticated copy of Certificate of Incorporation of said Corporation are now on file in my office, as required by law.

I FURTHER CERTIFY, That said Corporation has furnished satisfactory evidence of its legal existence and of its authority, under the laws of its domicile, to engage in the occupation, business, or pursuit stated in said declaration, and that it has paid the declaration and annual license fees required by law, as follows: For filing declaration, Fifty and 00–100 ($50.00) Dollars, and for annual license fee for the current fiscal year ending June 30, 1906, 82/100 ($.82) Dollars.

In Testimony Whereof, I have hereunto set my hand and affixed hereto the Seal of the State of Oregon. Done at the Capitol, at Salem, Oregon, this 25th day of June, 1906.

[State Seal] F. I. DUNBAR,
Secretary of State.

Filed July 1, 1910. G. H. Marsh, Clerk. **[1390]**

And afterwards, to wit, on the 12th day of September, 1910, there was duly filed in said court, an opinion, in words and figures as follows, to wit: **[1391]**

[Opinion.]

In the Circuit Court of the United States for the District of Oregon.

No. 3319.

UNITED STATES OF AMERICA,
Complainant,

vs.

C. A. SMITH, F. A. KRIBS, C. J. SWENSON, O. J. and W. R. MEALEY, J. A. THOMPSON, and Entrymen, and LINN & LANE TIMBER COMPANY,
Defendants.

No. 3320.

UNITED STATES OF AMERICA,
Complainant,

vs.

NILS O. WERNER et ux., THE FIRST TRUST & SAVINGS BANK OF ILLINOIS, LINN & LANE TIMBER CO., ROBERT F. GREACEN, H. E. ROGERS, JOHN A. WILLD, C. A. SMITH, F. A. KRIBS, S. A. D. PUTER, JOHN L. GREEN, THOS. WILSON et al.,
Defendants.

JOHN McCOURT, U. S. Attorney for Government.

A. H. TANNER, Attorney for Defendant Kribs.

W. W. BANKS and L. H. TARPLEY, Attorneys for Entrymen.

DOLPH, MALLORY, SIMON & GEARIN, and UELAND, LIND & JEROME, Attorneys

for Defendants Smith and Werner and L. & L. T. Co.

R. S. BEAN, District Judge:

These two suits were brought by the Government to set aside and vacate divers patents for public lands issued to sundry persons under the Timber & Stone Act, and were tried and submitted together. There are 28 patents involved in case 3320 and 17 in case 3319. The filings in 3320 were made on January 19, 20, 22, 23 and 31, and on February 1 and 26, 1900, and final proofs were made on April 18, 19, 20 and May 16. The land was **[1392]** conveyed at the time or within a few days after final proof to John A. Willd in trust for defendant C. A. Smith. On November 2, 1900, Willd conveyed it to defendant Greacen; February 11, 1901, Greacen conveyed to Rogers; and December 21, 1904, Rogers conveyed to Werner, all in trust for Smith, which deeds were all promptly recorded and the legal title stood in the name of Werner until it was subsequently conveyed to defendant Linn & Lane Timber Company as hereinafter stated.

The entries in 3319 were made in May, June and July, 1900; final proof submitted in August and October, and the land conveyed by the several applicants to the defendant Kribs in trust for Smith about the date of final proof.

On October 24, 1904, Kribs conveyed an undivided three-quarters thereof to Smith, and on December 28, of the same year conveyed the other undivided one-quarter to Swenson in trust for Smith, which deeds were also promptly placed of record. The title thus stood until it was subsequently conveyed to the Linn

& Lane Timber Company, as hereinafter stated.

After the several applications in 3320 had been filed and prior to final proof, a special agent of the Land Department, who made a partial investigation of the matter, reported that he had reason to believe they were fraudulent, and the Commissioner of the General Land Office subsequently directed Special Agent Stratford to investigate the several entries, as well as those in 3319, and report thereon. On March 9, 1901, Stratford reported recommending the issuance of patents, but his report being unsatisfactory, he was requested to continue his investigations. During the summer of 1901, Stratford obtained affidavits from the several entrymen and from defendants [1392½] Puter and Kribs, and one McKinley, which he later submitted to the Department, together with a report in which he intimates that, in his opinion, the entries were fraudulent and patents should be withheld. In March, 1902, A. R. Greene, a special representative of the Secretary of the Interior, made a report to his superior giving at some length the circumstances surrounding the entries, but without accompanying proof or recommendations. Subsequently the Secretary of the Interior directed the Commissioner of the General Land Office to transmit the several reports and matters concerning these entries to his office and after examination, the Secretary, on the 17th of May, 1902, directed that the claims be relieved from suspension and that patents issue therefor, which was done accordingly. The patents involved in case 3320 are dated August 12, 1902, eight of those in 3319, the

9th of July, 1902, and the remainder August 12, of that year.

In May, 1906, the defendant Smith, having previously acquired about 52,000 acres of timber lands in Linn, Lane and Douglas Counties, including those involved in these suits, organized under the laws of Minnesota, a corporation known as the Linn & Lane Timber Company, with capital stock of $100,000, divided into 1000 shares of $100.00 each, for the purpose of taking and holding title to these lands. 998 shares of stock were subscribed by Smith, and one share each by his wife and his attorney. Immediately after the organization of the corporation by the election of Smith as President, Johanna Smith, his wife, as Vice-President, Vernon Smith, his son, as Secretary, and Nan A. Smith, his daughter, Treasurer, and on June 4, 1906, Smith tendered to the directors of the corporation, consisting of himself, **[1393]** his son and his wife, a deed executed by himself and wife for his lands in the counties referred to, in payment of the stock of such corporation, and the same was accepted. On May 28 and August 15, 1907, respectively, Swenson and Werner, at Smith's request, conveyed the interests held by them to such corporation. The deeds from Smith, Swenson and Werner to the corporation were retained by Smith and not filed for record in the proper county until the 9th day of September, 1908, more than six years after the issuance of the patents involved in these cases.

The bills of complaint in these suits were filed on May 25, 1908. In case 3320 the majority if not all the entrymen were made parties, also Werner,

Greacen, Rogers, Smith, Kribs and Puter. The bill alleges that prior to the several entries involved in the suit, an unlawful agreement was entered into between Puter, Smith, Werner, Willd, Greacen, Rogers and Kribs, together with other persons to the complainant unknown, to defraud the Government out of the title to the lands in this suit by procuring persons to enter the same for the use and benefit of such conspirators, and that Smith acquired the title with notice of such fraud. In case 3319, the several entrymen, together with Smith, Kribs. Swenson, O. J. and W. R. Mealey and J. A. Thompson were made parties. The bill charges a similar unlawful agreement or conspiracy between Smith, Kribs, Swenson, O. J. and W. R. Mealey and J. A. Thompson, and other parties to the complainant unknown, and that Smith had full knowledge of such fraud when he acquired title. *Supe*nas ad respondendum were issued upon the filing of the bills and placed in the hands of the marshal for service and were in due time served upon the resident defendants. **[1394]** Smith, Swenson and Werner were nonresidents of the state and in July the Marshal returned the *supe*nas without service. Upon July 27, upon the application of the District Attorney, a warning was issued to them which was subsequently duly served. In September and October, Smith, Kribs and Werner, and perhaps some of the other defendants, filed pleas in abatement alleging that the property in controversy had been conveyed to and was owned by the Linn & Lane Timber Company, prior to the commencement of the suits, and that it was therefore an indispensable party. On

November 16, the complainant filed amended bills making the Linn & Lane Timber Company a party, and *supe*na was issued and placed in the hands of the marshal for service upon its resident agent and service was subsequently had. The amended bills contain substantially the same allegations as the originals, with the addition that the Linn & Lane Timber Company was organized by Smith for the purpose of defrauding the Government and to consummate the fraudulent acquisition of title to the lands involved in these two suits; that the deed from himself to the company was not made in fact until after the commencement of these suits, but was ante-dated for the fraudulent purpose, and that all the deeds were concealed and kept from record in pursuance of such fraudulent purpose. Answers were subsequently filed denying the averments of the bill and setting up as affirmative defenses (1) that Smith and the Linn & Lane Timber Company were purchasers of the property in good faith and without notice of any fraud. (2) That the decision of the Secretary of the Interior directing that the claims pass to patent is conclusive on the Government in this suit. And (3) that the suits are barred by the statute of limitations because not commenced against **[1394½]** the Linn and Lane Timber Company within six years from the date of patents. Replications were filed in due time and upon the issues thus joined, the evidence was taken in open court and the cases submitted for decision upon the law and the facts.

The evidence is voluminous and I shall not attempt to review it in detail, but shall state briefly the con-

clusions reached after a careful consideration of the testimony and the law applicable thereto.

There are substantially four questions presented for decision; first, whether the entries involved in these two suits were fraudulent; second, whether the defendant, C. A. Smith was a party to such fraud or a purchaser of the property in good faith for a valuable consideration and without notice thereof; third, whether the Government is concluded by the decision of the Secretary of the Interior that the entries should be passed to patent; and fourth, whether the suits are barred by the statute of limitations.

Upon the first question, but little need be said. It is, I think, very clearly established by the testimony that all the entries involved in both suits were fraudulent. In 3320, the testimony shows that early in Januaty, 1900, one of the Mealeys, who is a defendant in 3319, called upon McKinley at Albany and told him that there was a large tract of valuable timber land belonging to the Government in the eastern part of Linn County, some thirty or forty miles distant from Albany, which had recently been surveyed; that the Northern Pacific Railway Company then had cruisers in the timber estimating it, preparatory to taking it under the lieu land law, and inquired of McKinley whether or not some method could be devised by which the title could be acquired. McKinley thereupon interviewed the defendant, Puter, **[1395]** with whom he had been previously operating very largely in timber lands in this State, and after a conference between them, it was agreed that they would acquire the title by

procuring persons to make applications for the land under the Timber & Stone Act, and would subsequently sell and dispose of it if they were able to do so. In pursuance of this understanding, they entered into an agreement with Mealey to pay him $10.00 for each claim he would show them or applicants furnished by them, and persons were thereupon solicited to make application for the land, Puter and McKinley agreeing to meet all expenses, pay the purchase price of the land, and each applicant from $75.00 to $100.00 for his trouble. Fifty-seven persons were thus procured to make applications to enter lands under the Timber & Stone Act. Many of these persons resided in Albany and Salem, and some of them in Portland. They were taken in groups by McKinley or some of his assistants to Roseburg where they made the filings, the expenses incident to the trips being paid by McKinley. After the filings had been made, McKinley arranged for the publication of notices of final proof, and when the proper time arrived notified the applicants and took them to Roseburg, paid all their expenses and upon the making of final proof, they were paid the stipend agreed upon. It is clear that none of the applicants took the land for their own use and benefit, but for the use and benefit of Puter and McKinley.

The same may, I think, be said of the entries involved in case 3319. They were all made through the defendants the Mealey Brothers and Thompson with the understanding on the part of the several entrymen that all expenses and the purchase price of the property would be **[1395½]** paid, and that

each applicant would receive $50.00 for his trouble. It is true there was no express agreement with the several applicants in either case that the entries should be made for the use and benefit of another, but this is the effect of the entire testimony. As Puter states in his testimony, the conspirators studiously avoided entering into such an express contract or agreement, for they knew it would be such an evidence of fraud as would invalidate the entry, but caused it to be reported, and the applicants to be advised by other parties that if they would make the applications, they would receive upon making final proof, the stipulated sum and they acted on such understanding in making the applications and subsequently conveying the property as directed by Puter and McKinley and Mealey.

The next question is whether or not Smith was a party to the fraud or a purchaser of the property in good faith and for a valuable consideration and without notice.

The evidence in 3320 shows that immediately after the first entries were made, Puter went east for the purpose of looking up a purchaser for the land. After interviewing several parties, he finally interested the defendant Smith who gave him a letter of introduction to his (Smith's) agent or representative on the coast, the defendant Kribs. Puter met Kribs in San Francisco and presented this letter of introduction some time in February or about the 1st of March, 1900, and later, about the middle of March, Smith came to San Francisco, and there he and Kribs had an interview with Puter about the matter. The parties do not agree as to what transpired at that

interview. Kribs says that Puter told them that he had located 57 pieces of land in Oregon and had **[1396]** agreed to furnish the locators money with which to make final proof for which he (Puter) was to receive a location fee of $200.00 for each claim; that the time was approaching when final proof must be made and that he had had considerable trouble to raise the money and desired to make an arrangement by which the applicants could borrow the necessary money with which to make final proof and pay the location fee; that he gave a description of the land, the quality and quantity of timber thereon and said that the land had been taken by "a lot of poor fellows" and that after they had proved up there would be but little trouble in purchasing it from them. Smith's version of the transaction does not accord with that of Kribs. Smith says Puter claimed that he had eight or nine thousand acres of land in Linn County for sale; that it would average 75,000 feet of timber to the acre, was comparatively level and a splendid logging proposition; that the timber was a fine quality of yellow fir and was tributary to driving streams which would make it practicable to drive the logs to Portland; that he offered to sell the lands for $6.00 an acre, and "I told him, in substance, that if the timber was as he claimed, and the topography of the country and the streams I would take the lands. Mr. Kribs was present at the conversation, and then we had an understanding there at that time that some time in the near future when Mr. Kribs would get up, he would go and look these lands over, and if he found the lands as Mr. Puter claimed, then

I would take them. In other words, Mr. Kribs should be the judge whether the lands and everything was in accordance with the representations of Mr. Puter." Smith also testifies that there was nothing said concerning the title to the lands or of the entries having been made **[1397]** under the Timber & Stone Act, or that it was necessary that final proof should be made before they could be disposed of. In this regard, Smith is corroborated by Puter, who testifies that he offered the lands for sale to Smith and that Smith agreed that Kribs should come to Oregon, examine them and if he found them satisfactory, to make the purchase. So I take it to be clearly established that Kribs was the agent of Smith with power and authority to purchase the lands and came to Oregon for that purpose. He arrived in Albany about the 1st of April, 1900. Prior to that time, the Northern Pacific Railway Company had filed a contest against each of the entries on the ground that they were fraudulent, alleging that they were not made for the use and benefit of the several entrymen but for other parties. McKinley was under arrest charged with subornation of perjury in the matter of such entries. Kribs was advised of these facts, but notwithstanding he had operated in timber lands for some time and was familiar with the requirements of the Timber & Stone Act, he went ahead and examined the land and concluded to purchase it from Puter for Smith, but on account of the controversy over the title, the price was reduced to $5.25 an acre. Subsequently when the time arrived for the first applicants to make final proof, a hearing was begun on

the contest of the Northern Pacific Railway Company and after it had continued for about two days, it was postponed in order that Puter might effect a compromise with the Railway Company. Kribs was in Roseburg (where the local land office is located and the hearing had) during this time and knew of these matters. After the hearing had been postponed, Puter went to Tacoma, the head office of the Northern Pacific Railway Company, and there a compromise was entered **[1398]** into between him and the Railway Company, by which he was to secure relinquishments from twenty-four of the applicants, and the Railway Company was to dismiss its contest as to the remainder. The agreement was carried into effect. Puter secured the twenty-four relinquishments, compromising with the applicants by paying each of them about $25.00 therefor, in place of the $100.00 first agreed upon, and on the 18th of April, 1900, the Railway Company dismissed its contest as to the remainder. The several entrymen were thereupon notified by Puter and McKinley, and on the same day sixteen of them appeared at the Land Office and tendered their final proof. After the final proof papers had been made and signed by the applicants, but before they were accepted by the Land Office, the applicants were taken into the office of Kribs' attorney, adjoining that of the Land Office, and there executed to Kribs a mortgage on the lands described in their several applications, to secure the payment of the sum of $600.00. After these mortgages had been executed, Kribs paid to the Land Office the purchase price of the land and the neces-

sary fees, and furnished the money with which each of the applicants was paid the stipulated sum of $75.00 or $100.00 for making the entry. A few days later and within a week, deeds were secured from all these applicants conveying the land, by Kribs' direction, to John A. Willd in trust for the defendant Smith, which deed was delivered by Puter to Kribs, and Kribs thereupon paid to him the balance of the purchase price of the land. The same course was pursued in regard to each of the other applicants when they made their final proof. The money used by Kribs for this purpose was furnished by Smith and Kribs was acting for Smith in the transaction.

The lands involved in case 3319 are adjoining or in the same vicinity as the lands involved in 3320. Soon **[1399]** after Kribs and perhaps Smith had visited that section of the country and examined the timber growing on the Government land, it became currently reported in the community that any person located upon timber land by the defendants Mealey and Thompson would receive $50.00 for doing so. In pursuance of this rumor and report, the several applicants whose patents are involved in the suit applied to the Mealeys and Thompson to be located upon Government land, and were so located. They were taken to Roseburg to make final proof by the Mealeys or Thompson, all the expenses of the trip being paid, both attending the initial filing and the final proof. When the final proofs were submitted, the same course was pursued in the matter of the mortgage and transfer of the property as in 3320, except that the deeds were made by the appli-

cants to Kribs in trust for Smith. The money with which to pay for the land, the Land Office fees and the stipulated stipend to the several applicants was Smith's money and furnished by Kribs, and the transaction was for Smith's benefit. There is no direct testimony in this case that there was any understanding or agreement with Kribs to furnish the money with which to pay for the land, and pay the several expenses attending the location, and the amount due the locators, prior to the initial application, but it seems to me that the conclusion is irresistible that such was the case. Neither the Mealey Brothers nor Thompson had any money with which to carry on this enterprise. The land was in the vicinity of that acquired by Smith through Puter and McKinley. It was practically the same character. The filings were made after Kribs had commenced acquiring title in that vicinity. Mealey was familiar with this and had assisted Puter and McKinley **[1400]** in their enterprise. The same method was pursued in order to acquire title, and I am of the opinion that the transaction was substantially of the same character and for the same purpose. I have no doubt that Kribs not only had knowledge of the fraudulent character of the entries involved in these cases, but was an active participant in consummating such fraud. He was advised of the contest of the Railway Company, of McKinley's arrest, and of the hearing of such contest before he consummated the deal. In addition to this, the circumstances surrounding the transaction, the manner in which it was carried out, and the apparent attempt to conceal its

real nature are strong badges of fraud, and I think no one can read this record without coming to the conclusion that it was a fraudulent transaction to which Kribs was a party. It may be true that Smith, his principal, had no actual knowledge of such fraud, although the evidence would be more satisfactory upon that point if the correspondence between him and Kribs and Puter concerning this transaction had not all been destroyed about the time the matter was being investigated by a Federal Grand Jury, and it was rumored or reported that Smith and Kribs were liable to be indicted and that the Government was contemplating bringing a civil suit to cancel and set aside the patents. But whether Smith had actual knowledge of the fraud or not, Kribs was his agent, authorized to purchase the property and whatever knowledge Kribs acquired is chargeable to Smith.

I conclude therefore that Smith was not a bona fide purchaser for value and without notice of the fraud, and cannot claim the rights of such in this suit. **[1401]**

The next question is whether the decision of the Secretary of the Interior directing these claims to be passed to patent is conclusive in this suit. It was settled by the Supreme Court in U. S. vs. Minor, 114 U. S. 233, that the Government has the same remedy to set aside a patent for land on the ground of fraud in procuring it as an individual would have to annul his deed under like circumstances, and that the decision of the Department in passing the claim to patent is not conclusive when such decision was obtained by fraud. Now, the action of the Secretary of the In-

terior in directing these claims to be passed to patent was based upon the reports of Special Agents and the accompanying *ex parte* affidavits of the several claimants, and Puter, McKinley and Kribs. It was clearly shown on the trial that these affidavits were false and did not state the actual facts in the case, and they were known to be such to Kribs, the agent and representative of Smith. Indeed the testimony in this case strongly shows that one of the special agents was corrupted by Kribs, and that the applicants were coached by him or with his knowledge and consent, to make the false affidavits. He admitted upon the trial that his own affidavit did not state the actual facts of the transaction but was an attempt on his part to make it appear that his connection with the matter was the mere loaning of money to the several applicants with which to make the final proof, and that the purchase of the land was an independent transaction with which he had no connection. Having thus induced the Secretary of the Interior to pass these claims to patent upon false and fraudulent testimony, with knowledge of its character, it certainly cannot be successfully contended that the decision of that officer is conclusive upon the Government. Having knowingly obtained such decision by perjury and subornation of perjury, it cannot be relied upon as a defense. **[1402]**

The next, and what I deem the most important and difficult question in this case, is the statute of limitations. The statute provides that "suits by the United States to vacate and annul patents heretofore issued shall only be brought within five years

from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patent." 26 Stat. at L. 1093. These suits were not commenced against the Linn & Lane Timber Company until more than six years after the date of the issuance of the patents. As a general rule, the holder of the legal title is an indispensable party to a suit to set aside a patent.

U. S. vs. Winona & St. P. R. 67 Fed. 948.

U. S. vs. C. P. R. R., 11 Fed. 449;

and the statute of limitations does not cease to run in his favor until he is made a party to the suit and process issued and placed in the hands of the marshal with the bona fide intent that it shall be served. Miller vs. McIntyre, 6 Peters, 60. But the identity of Smith and the Linn & Lane Timber Company and their relation to the title to the property in controversy is such that I do not think the rule should be applied in this case. Smith is the real party in interest and the beneficial owner of the property. The corporation was organized by him as a mere holding concern. He owned all of its capital stock. He and the members of his family composed its Board of Directors and were the officers of the corporation. In fact Smith was the corporation and the corporation was Smith. The question of the statute of limitations should be therefore determined by the time the suit was commenced against Smith and the holders of the record title, and not against the mere holding corporation. If, prior to the commencement of these suits, Smith had conveyed or

caused the property to be conveyed to some natural person in trust for him, but had withheld the deeds from record and kept the matter secret **[1403]** until the six years had expired, it would hardly be contended that the action is barred, and no greater effect should be given to the organization of the corporation and the deeds to it. The suit was commenced against Smith when the warning order was issued to him and placed in the hands of the proper officer for service.

U. S. vs. Lumber Co., 80 Fed. 309, and 85 Fed. 827.

At that time the statute had not run except as to the eight patents issued July 9, 1902. As to them, the suit is barred for, in my judgment, the statute begins to run from the date of the issuance of the patent and not from the discovery of the fraud. The language of the statute is plain and leaves no room for construction. It says suits of the United States to vacate or annul patents shall only be brought within six years after the issuance of patent. As said by Mr. Justice Gilbert, in speaking for the Circuit Court of Appeals for the 9th Circuit, in 85 Fed. *supra:* "There is no room for construction. It is clear that Congress has said that all suits by the United States to vacate patents shall be brought within the period limited by the act." The object of this statute is to extinguish any right the Government may have in the land and vest a perfect title in the adverse holder after six years from date of the patent, regardless of any mistake or error in the

Land Department, or the fraud or imposition of the patentee.

U. S. vs. Winona & St. P. R. R., 165 U. S. 463.

U. S. vs. Chandler-Dunbar Co., 209 U. S. 447.

A point is made of the fact that subsequent to the organization of the corporation and before the filing of the original bills of complaint in these suits, Smith had sold 15 shares of the capital stock and pledged other shares to secure payment of an indebtedness of his, but this does not change the status of the matter or the rights of the parties to these suits. We are not concerned at this time **[1404]** with the status of the stockholders, but with the corporation itself. It is still the holder of the title and has not disposed of it to a *bona fide* purchaser for value. It is admitted that it took title charged with whatever infirmities existed in the hands of Smith. It is therefore in no sense a *bona fide* purchaser or entitled to the protection of such, but is a mere holding corporation organized by Smith to suit his convenience and as a holder of the legal title for his use and benefit. Smith is a party to the suit and it was commenced against him within six years from the date of issuance of all the patents except those issued in July, 1902, and I do not think that the defendants, either the corporation or Smith, can, under these circumstances, urge this statute as a bar to these suits, when it appears in the testimony that after the property had been conveyed to the corporation by Smith, the deeds were retained by him and the transfer not made public until after the statute of limitations had run.

I am aware that the soundness of this conclusion is not free from doubt, but I believe it to be in accordance with equity, justice and sound reason.

When these cases were called for trial, the complainant made an application to amend the bills of complaint by alleging the value of the property involved, so that it might recover damages for the fraud in case it should be unable to obtain the primary relief prayed for in the bills. The ruling on this motion was reserved until the final decision in the case with permission to the Government to give testimony upon the hearing in reference to the value of the property. I am now of the opinion that the amendment should not be allowed. The suit to set aside and vacate the patents on the ground of fraud is inconsistent **[1405]** with a claim for damages on account of such fraud. The one proceeds in disaffirmance of *of* the transaction and the other in affirmance of it. Again a suit to vacate a patent is equitable in its nature while a proceeding to recover damages is legal and the two therefore *cannot joined* in the same suit. If the Government has a cause of action against the defendants or any of them for damages on account of the fraud, it is a legal action and should be brought on the law side of the Court.

It follows from these views that the complainant is entitled to the relief demanded, except as to the patents issued in July, 1902, and decrees will be entered accordingly.

Filed S*t*eptember 12, 1910. G. H. Marsh, Clerk, United States Circuit Court, District of Oregon.
[1406]

And afterwards, to wit, on the 27th day of February, 1911, there was duly filed in said court, Exemplified Copy of Letters Testamentary issued to Eva Werner, in words and figures as follows, to wit: **[1407]**

[Exemplified Copy of Letters Testamentary Issued to Eva C. Werner.]

LETTERS TESTAMENTARY.

State of Minnesota,
County of Hennepin,—ss.

THE LAST WILL of Nils O. Werner, late of Hennepin County, Minnesota, deceased, having been proved and recorded in the Probate Court of the County of Hennepin, Eva C. Werner, of said County and State, who is named therein as such is hereby appointed Executrix.

Witness, Hon. GEORGE R. SMITH, Judge of the Probate Court in the County of Hennepin, and the Seal of the Court, affixed the 28th day of March, A. D. 1910.

By the Court:

[Court Seal] GEORGE R. SMITH,
Judge of Probate.

Hennepin County, Minnesota. **[1408]**

PROBATE COURT.

State of Minnesota,
County of Hennepin,—ss.

I, Geo. L. Hanson, Clerk of the Probate Court, within and for said County of Hennepin, and Custodian of the Seal and Records of said Court, do

hereby certify that I have compared the foregoing copy of the record of the Letters Testamentary, in the matter of the Estate of Nils O. Werner, deceased, with the original records thereof now remaining in this office and have found the same to be correct transcripts therefrom, and of the whole of such original Records. And I further certify that said exemplification would be received in evidence in all the courts of the State of Minnesota.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Minneapolis, in said County, this 15th day of February, A. D. 1911.

[Seal of Probate Court] GEORGE L. HANSON,
Clerk of Probate Court. **[1409]**

PROBATE COURT.

State of Minnesota,
County of Hennepin,—ss.

I, George R. Smith, sole Judge of Probate Court within and for the said County of Hennepin, do hereby certify that said Court is a Court of Record. and that Geo. L. Hanson, whose signature is affixed to the foregoing certificate, is the Clerk of said Probate Court; that said certificate is attested in due form of the law; that the aforesaid signature of said Clerk is genuine, and that the seal thereto affixed is the seal of said Probate Court.

Witness my hand at Minneapolis this 15th day of February, 1911.

GEORGE R. SMITH,
Judge of Probate.

PROBATE COURT.

County of Hennepin,—ss.
State of Minnesota,

I, GEO. L. HANSON, Clerk of the Probate Court within and for the County of Hennepin, do hereby certify that the Hon. George R. Smith, whose name is subscribed to the preceding certificate, is the sole Judge of the Probate Court within and for the County of Hennepin, aforesaid, duly elected, sworn and qualified, and that the signature of said Judge to said certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 15th day of February, 1911.

[Seal of Probate Court]

GEO. L. HANSON,
Clerk of Probate Court.

Letters Testamentary Exemplified Copy. Filed Feb. 27, 1911. G. H. Marsh, Clerk. **[1410]**

And afterwards, to wit, on the 27th day of February, 1911, there was duly filed in said court, a Notice of Appeal and to Join in Appeal, in words and figures as follows, to wit: **[1415]**

(Title of Court and Cause.)

Notice of Appeal and to Join in Appeal from Decree.

To Defendants, Thomas Wilson, Charles Barr, Neal D. Dozier, Harry Saltmarsh, Edward Finley, J. S. Phillips, Zebulin Smith, Benjamin F. Kirk, George L. Wilson, Peter Buffington, Elam Miller, and L. H. Tarpley, Their Solicitor and Counsel; and to Defendants, Elvira S. Jacobs,

John Harrison, Jacob W. Stillwell, Henry Blakely, James B. Cooley, Hugh Blakely and W. W. Banks, Their Solicitor and Counsel; and to Defendants, S. A. D. Puter, John L. Green, Eva C. Werner and to Eva C. Werner as Executrix of Nils O. Werner.

You, and each of you, are hereby notified that at the hour of ten o'clock in the forenoon at the courtroom of the above-named court in the city of Portland, County of Multnomah, **[1416]** State of Oregon, on the 27th day of February, 1911, the defendants, the Linn & Lane Timber Company and Charles A. Smith, will present to said Court their petition for appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree entered in the above-entitled cause on the 20th day of October, 1910, together with their assignment of errors, and you are invited then and there to appear and unite with the said Linn & Lane Timber Company and Charles A. Smith in said appeal and assignment of errors and failing so to do you will be deemed to have acquiesced in said decree and the said Linn & Lane Timber Company and Charles A. Smith will prosecute said appeal without joining you as parties appellant and will name you therein as appellees.

Dated February 13th, 1911.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JOHN M. GEARIN,

Solicitors and Counsel for said Defendants and Appellants, the Linn & Lane Timber Company and Charles A. Smith.

I hereby admit due service on me of the foregoing Summons in Severance this 21st day of February, 1911.

S. A. D. PUTER,
L. H. TARPLEY,
W. W. BANKS,

Attys. for John Harrison, Hugh Blakely, Jacob W. Stillwell, James E. Cooley.

A. H. TANNER,

Attorney for Elvira S. Jacobs. **[1417]**

State of Oregon,
County of Multnomah,
City of Portland,—ss.

I hereby certify that I served the within Summons upon the within named John L. Green on this 20th day of February, A. D. 1911, in said County of Multnomah, in person.

D. W. TARPLEY.

Notice of Appeal and to Join in Appeal from Decree. Filed Feb. 27, 1911. G. H. Marsh, Clerk. **[1418]**

And afterwards, to wit, on the 27th day of February, 1911, there was duly filed in said court, a Petition for Appeal, in words and figures as follows, to wit: **[1419]**

(Title of Court and Cause.)

Petition for Appeal.

The above-named defendants, the Linn & Lane Timber Company and Charles A. Smith, conceiving themselves aggrieved by the decree entered in the

above-entitled cause on the 20th day of October, 1910, hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and pray that the appeal be allowed and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, and your petitioners pray that said **[1420]** decree may be reviewed and reversed.

Dated Feby. 27th, 1911.

JOHN LIND,
A. UELAND,
W. W. JEROME,
JNO. M. GEARIN,

Solicitors and Counsel for said Defendants and Appellants the Linn & Lane Timber Company and Charles A. Smith.

Petition for Appeal. Filed Feb. 27, 1911. G. H. Marsh, Clerk. **[1421]**

And afterwards, to wit, on the 27th day of February, 1911, there was duly filed in said court, an Assignment of Errors on Appeal, in words and figures as follows, to wit: **[1422]**

(Title of Court and Cause.)

Assignment of Errors.

The defendants, the Linn & Lane Timber Company and Charles A. Smith, assert that in rendering the decree entered in the above-entitled cause on the 20th day of October, 1910, the said Circuit Court erred in

the following particulars, to wit:

(1) In declaring void, cancelling, annulling and setting aside the twenty-eight patents of August 12th, 1902, described in the decree. This was error because the suit was barred by an Act of Congress of March 3d, 1891, 26 St. L. 1093, the same not having been commenced against the Linn & Lane Timber Company, the owner of the title granted by the patents, within six years after the date of the patents, as required by said act. **[1423]**

(2) In declaring the deeds and conveyances described in the bill to be in fraud and violation of, and subject to some right of the complainant, and cancelling, annulling and setting aside such deeds and conveyance.

(3) In enjoining and restraining defendant, the Linn & Lane Timber Company, its agents, servants and employees, from asserting, exercising or exerting any authority or control over the lands described in the decree, or any of them, or over or in relation to the title to said lands, or any part thereof, by virtue of the deeds and conveyances of said lands described in the bill.

(4) In declaring the lands described in the decree to be the property of the complainant in fee simple, divested of all right, title or estate in law or equity claimed or asserted by defendant, the Linn & Lane Timber Company.

(5) In declaring that complainant is entitled to the immediate possession of all of the lands described in the decree.

(6) In failing to dismiss the bill. This was error because the suit was barred by the Act of Congress of

March 3d, 1891, 26 St. L. 1093, the same not having been commenced against the Linn & Lane Timber Company, the owner of the title granted by the patents described in the decree, within six years after the date of the patents, as required by said Act.

(7) In not dismissing the bill because of failure to prove the conspiracy charge therein against Charles A. Smith, or Nils O. Werner, or Robert F. Greacen, or Hubert F. Rogers, or Frederick A. Kribs, or John A. Willd, or S. A. D. Puter.

(8) In not dismissing the bill because of complainant's failure to prove that Charles A. Smith, when he purchased the land described in the decree, had notice of some of the alleged **[1424]** conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands.

(9) In not dismissing the bill on the ground that Charles A. Smith, for a full and adequate consideration, had purchased the lands described in the decree from the persons who had entered and purchased the same from the complainant, with no notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands, but in good faith, believing said persons could rightfully and lawfully sell and convey said lands, and had thereafter, before the commencement of the suit, conveyed said lands to the Linn & Lane Timber Company.

(10) In not dismissing the bill on the ground that the entries of the lands described in the decree had been fully investigated under the direction of complainant's Secretary of the Interior, by officers of his department, with reference to all the alleged con-

spiracies, frauds and irregularities complained of in the bill in connection with said entries, and that after such investigation, on the evidence adduced said Secretary had determined and decided said entries to be in all respects lawfully made and valid, and had thereupon directed the patents described in the bill and decree to be issued.

(11) In not dismissing the bill as to the land granted by the patent to Sadie E. Puter instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Sadie E. Puter to purchase said land under the provisions of the Act of Congress of June 3rd, 1878 (20 St. L. 89) was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(12) In not dismissing the bill as to the land granted by the patent to Elvira Jacobs instead of declaring **[1425]** the patent void. This was error because the evidence did not show that the duplicate written statement of said Elvira Jacobs to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(13) In not dismissing the bill as to the land granted by the patent to H. C. Barr instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said H. C. Barr to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2

of said Act.

(14) In not dismissing the bill as to the land granted by the patent to S. A. D. Puter instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said John J. Jaggy to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(15) In not dismissing the bill as to the land granted by the patent to John J. Jaggy instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said John J. Jaggy to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(16) In not dismissing the bill as to the land granted by the patent to Neal D. Dozier instead of declaring the patent void. This was error because the evidence did not **[1426]** show that the duplicate written statement of said Neal D. Dozier to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(17) In not dismissing the bill as to the land granted by the patent to Zebulin Smith instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Zebulin Smith to purchase said

land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(18) In not dismissing the bill as to the land granted by the patent to Thomas Wilson instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Thomas Wilson to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(19) In not dismissing the bill as to the land granted by the patent to John L. Green instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said John L. Green to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(20) In not dismissing the bill as to the land granted by the patent to J. S. Phillips instead of declaring **[1427]** the patent void. This was error because the evidence did not show that the duplicate written statement of said J. S. Phillips to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(21) In not dismissing the bill as to the land granted by the patent to Charles Burley instead of

declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Charles Burley to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(22) In not dismissing the bill as to the land granted by the patent to Charles Barr instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Charles Barr to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(23) In not dismissing the bill as to the land granted by the patent to Edward Finley instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Edward Finley to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(24) In not dismissing the bill as to the land **[1428]** granted by the patent to Douglas Adkinson instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Douglas Adkinson to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the re-

quirements of Section 2 of said Act.

(25) In not dismissing the bill as to the land granted by the patent to Harry Saltmarsh instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Harry Saltmarsh to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(26) In not dismissing the bill as to the land granted by the patent to Jennie Moulton instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Jennie Moulton to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(27) In not dismissing the bill as to the land granted by the patent to George L. Thompson instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said George L. Thompson to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act. **[1429]**

(28) In not dismissing the bill as to the land granted by the patent to Isaac R. Borum instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Isaac R. Borum to purchase said

land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(29) In not dismissing the bill as to the land granted by the patent to Benjamin F. Kirk instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Benjamin F. Kirk to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(30) In not dismissing the bill as to the land granted by the patent to Hugh Blakely instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Hugh Blakely to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(31) In not dismissing the bill as to the land granted by the patent to James B. Cooley instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said James B. Cooley to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act. **[1430]**

(32) In not dismissing the bill as to the land

granted by the patent to Frank W. Burford, instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Frank W. Burford to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(33) In not dismissing the bill as to the land granted by the patent to John Harrison instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said John Harrison to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(34) In not dismissing the bill as to the land granted by the patent to Henry B. Blakely instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Henry B. Blakely to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(35) In not dismissing the bill as to the land granted by the patent to Peter Buffington instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Peter Buffington to purchase said land under the provisions of the Act of Congress of

June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act. **[1431]**

(36) In not dismissing the bill as to the land granted by the patent to Jacob W. Stillwell instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Jacob W. Stillwell to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(37) In not dismissing the bill as to the land granted by the patent to Elam Miller instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Elam Miller to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

Wherefore the said Linn & Lane Timber Company and Charles A. Smith pray that said decree be reversed.

Dated Feby. 27th, 1911.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,

Solicitors and Counsel for Defendants, the Linn & Lane Timber Company and Charles A. Smith.

Assignment of Errors on Appeal of Linn and Lane

Timber Company et al. from Decree. Filed Feb. 27, 1911. G. H. Marsh, Clerk. **[1432]**

And afterwards, to wit, on Monday, the 27th day of February, 1911, the same being the 126th judicial day of the regular October, 1910, term of said court—Present, the Honorable ROBERT S. BEAN, United States District Judge presiding —the following proceedings were had in said cause, to wit: **[1433]**

(Title of Court and Cause.)

Order Allowing Appeal and Fixing Amount of Bond.

On this 27th day of February, 1911, came the Linn & Lane Timber Company and Charles A. Smith, two of the defendants in the above-entitled cause, and filed herein and presented to this court their petition for the allowance of an appeal from the decree made and entered in said cause on the 20th day of October, 1910, together with assignment of errors, and praying that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit;

And at the same time said Linn & Lane Timber **[1434]** Company and Charles A. Smith also presented proof of service of written notice on the other defendants in said cause, who have been served with process or have appeared therein, requiring such other defendants to join in said appeal and assignment of errors;

And none of the said other defendants so served with said notice having appeared to join in said ap-

peal and assignment of errors;

In consideration whereof this Court does hereby allow the said appeal of said defendants, the Linn & Lane Timber Company and Charles A. Smith, from said decree upon said defendants giving a bond according to law and the rules of the said Circuit Court of Appeals in the sum of Two Thousand ($2000) Dollars to answer all costs if they shall fail to sustain their said appeal.

Done in open court this 27th day of February, 1911.

R. S. BEAN,
Judge.

Order Allowing Appeal and Fixing Amount of Bond. Filed February 27, 1911. G. H. Marsh, Clerk. **[1435]**

And afterwards, to wit, on the 7th day of March, 1911, there was duly filed in said court a Bond of Appeal, in words and figures as follows, to wit: **[1436]**

(Title of Court and Cause.)

Bond on Appeal.

Know All Men by These Presents: That we, the Linn & Lane Timber Company and Charles A. Smith of the City of Minneapolis, in the State of Minnesota, as principals, and Fredk. A. Kribs and ————, of the City of Portland in the State of Oregon, as sureties, are held and firmly bound unto the United States of America in the full and just sum of Two Thousand ($2000) Dollars to be paid to the said United States of America, its attorneys or assigns, of which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly

and severally, firmly by these presents.

Sealed with our seals and dated this 7th day of March, A. D. 1911. [1437]

Whereas on the 20th day of October, 1910, in a suit in the Circuit Court of the United States for the District of Oregon between the United States of America, complainant, and said Linn & Lane Timber Company, Charles A. Smith and others, defendants, a decree was rendered against the defendants, and the said Linn & Lane Timber Company and Charles A. Smith having obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree of the aforesaid suit, and a citation directed to the said United States of America is about to be issued citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California.

Now, the condition of the above obligation is such that if the said Linn & Lane Timber Company and Charles A. Smith shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation is to be void; otherwise to remain in full force and virtue.

LINN AND LANE TIMBER COMPANY.
By A. UELAND,
Its Solicitor and Counsel.

[Seal] CHARLES A. SMITH. [Seal]
By A. UELAND,
His Solicitor and Counsel.

FREDERICK A. KRIBS. [Seal]

_____ [Seal]

This bond approved as to form, amount and sufficiency of sureties this 7th day of March, 1911.

R. S. BEAN,
Judge.

Bond on Appeal. Filed March 7, 1911. G. H. Marsh, Clerk. **[1438]**

And afterwards, to wit, on the 28th day of March, 1911, there was duly filed in said court, a Stipulation as to Transcript of Record on Appeal, in words and figures as follows, to wit: **[1439]**

(Title of Court and Cause.)

Stipulation as to Making Up of Record.

It is hereby stipulated between the plaintiff, by the United States Attorney for the District of Oregon, and defendants, the Linn and Lane Timber Company and Charles A. Smith, by their solicitors and counsel, that the transcript of the record on the appeal from the decree in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth Circuit, shall be made up of the following papers, it being hereby agreed that the same constitute all the record, proofs, entries and papers on file in said cause necessary on the hearing of said appeal, to wit: **[1440]**

The original bill; the subpoena ad respondendum issued thereon and the return as to services thereof on C. A. Smith; the praecipe of appearance for F. A. Kribs; the motion and affidavit for a warning order against C. A. Smith et al., filed July 27th, 1908; the warning order issued on said date and the return of service thereof on C. A. Smith; ~~the praecipe of ap~~

~~pearance for C. A. Smith et al.;~~ the plea of Frederick A. Kribs et al., to said original bill; the order of October 5, 1908, giving plaintiff 15 days in which to file an amended bill; the plea of Nils O. Werner et al., to the original bill; the orders of respectively October 19th, October 29th and November 5th, 1908, extending time to file amended bill; the amended bill; the order of November 16th, 1908, directing issuance of subpoena ad respondendum to the Linn and Lane Timber Company; the subpoena ad respondendum to said Company, issued pursuant to said order, and the return of service thereof; the praecipe of appearance for said Company; the order of December 2, 1908, extending the time in which to plead to the amended bill; the answer of Nils O. Werner et al. to the amended bill; the answer of Linn and Lane Timber Company to the amended bill; the replication to the answer of Nils O. Werner et al.; the replication to the answer of Linn and Lane Timber Company; the order of February 18, 1910, setting case for final hearing; the order of April 18, 1910, on motion to amend the bill; the objections of Linn and Lane Timber Company et al. to said motion; the affidavit of John McCourt, filed April 18, 1910, in support **[1441]** of said motion; the order of April 19, 1910, granting said motion; the amendment to the bill filed April 22, 1910; the answer of Linn and Lane Timber Company et al. to said amendment; the order of May 3, 1910, appointing Geo. F. Hitchcock, Jr., Special Examiner; the order of May 5, 1910, limiting time to take evidence; order of July 27, 1910, and the amendment to the bill filed August 6, 1910.

Also all the evidence adduced orally in open court, and all the proceedings had in open court, the same having been taken in writing by the court stenographer and filed in said cause, except the testimony of Gus A. Lovegren, J. A. Buckley, Charles B. Garrison, B. Gildner, Finlay Morrison and Charles W. Embody, and except the testimony of Horace G. McKinley as a witness for defendants (all said testimony relating wholly to the value of the land described in the bill), and except the testimony of Fred C. Rabb (the same having been admitted only against defendant Frank W. Burford who was not served with process and did not appear in said cause);

Also the following documentary evidence adduced in open court and filed in said cause, to wit:

Affidavit of	Douglas Adkinson	in U. S. Ex.	2
"	Charles Barr	"	4
"	H. C. Barr	"	6
"	Luèlla Beeman	"	8
"	Henry Blakely	"	10
"	~~Hugh Blakely~~	"	~~12~~
"	Peter Buffington	"	15

[1442]

Affidavit of	~~Frank Burford~~	in U. S. Ex.	~~17~~
"	Charles Burley	"	19
"	James B. Cooley	"	21
"	~~Neal Dozier~~	"	~~23~~
"	John L. Green	"	26
"	John Harrison	"	28
"	John J. Jaggy	"	32
"	Benj. Kirk	"	34
"	Jay S. Phillips	"	38

"	S. A. D. Puter	"	42
"	Harry Saltmarsh	"	44
"	Zebulin Smith	"	46
"	Jacob Stillwell	"	48
"	Geo. L. Thompson	"	50
"	Thomas Wilson	"	52

U. S. Exhibits 53, 64, 69, 70, 155, 157, 161 to 168, inclusive, 171, 184 to 186, inclusive, and 189 to 195, inclusive, and Defendant's Exhibits "I," "J," "K" and "M."

Also the depositions taken and returned by Geo. F. Hitchcock, Jr., as Special Examiner, and the exhibits returned and filed with the same, to wit, Defendant's Exhibits "C," "D," "M," "N," "O" and "P."

Also the opinion of the Court, the decree, the copy of letters testamentary to Eva C. Werner, the notice to certain defendants to join in the appeal and the proof of service thereof, the petition of Linn and Lane Timber Company and Charles A. Smith for appeal, their assignment of **[1443]** errors, the order allowing their appeal, their bond on appeal and approval of same, and the original citation on said appeal and proof of service thereof.

Dated at Portland, Oregon, March 27, 1911.

JOHN McCOURT,
United States Attorney for the District of Oregon.

JOHN LIND,
A. UELAND,
W. M. JEROME,
JNO. M. GEARIN,
Solicitors and Counsel for Defendants Linn and Lane Timber Company and Charles A. Smith.

Filed March 28, 1911. G. H. Marsh, Clerk. **[1444]**

And afterwards, to wit, on the 3d day of April, 1911, there was duly filed in said court a Stipulation, in words and figures as follows, to wit: **[1445]**

(Title of Court and Cause.)

Stipulation [Re Government's Exhibits 54–62, Inclusive, etc.].

It is hereby stipulated by and between the parties, that Government's Exhibits 54 to 62, inclusive, 65 to 68, inclusive, 72 to 75, inclusive, 77 to 78, inclusive, and 116 to 151, inclusive, being deeds and mortgages, may be omitted from the transcript herein.

It is further hereby stipulated and agreed that said deeds and mortgages affect the land of the grantors named therein and described in the bill of complaint as having been entered and applied for by said grantors respectively, and that the dates upon which said deeds and mortgages purport to have been executed, and the grantees therein, are as follows: **[1446]**

Applicant.	Mtg. to Kribs.	Ex.	Deed to Willd.	Ex.
Luella Beeman	May 16–1900	*55*	May 19, 1900	54
Jennie Moulton	May 16	56	May 19	57
Thomas Wilson	Apr. 19	58	Apr. 26	59
Edward Finley	Apr. 18	60	Apr. 23	61
Basil H. Wagner			Apr. 23	62
Neal D. Dozier	Apr. 19	66	Apr. 23	65
Henry Blakely	May 16	67	May 19	68
Harry Saltmarsh	Apr. 19	72	Apr. 24	73
Jay S. Phillips	Apr. 18	74	Apr. 23	75
John Harrison	May 16	77	May 17	78
Douglas Adkinson	Apr. 19	116	Apr. 23	117
Charles Barr	Apr. 18	118	Apr. 23	119
Harry C. Barr	Apr. 19	120	Apr. 25	121
Hugh Blakely	Apr. 16	122	May 19	123
Isaac R. Borums	May 16	124	May 19	125
Peter Buffington	May 16	126	May 19	127
F. W. Burford	May 16	128	May 21	129
Chas. Burley	Apr. 18	130	Apr. 23	131
J. B. Cooley	Apr. 16	132	May 17	133
J. L. Green	Apr. 18	134	Apr. 23	135
Elvira Jacobs	Apr. 20	136	Apr. 23	137
John J. Jaggy	Apr. 19	138	Apr. 23	139
Benj. E. Kirk	May 16	140	May 21	141
Elam Miller	May 16	142	May 19	143
S. A. D. Puter			Apr. 23	144
Sadie E. Puter			Apr. 23	145
Zebulin Smith			Apr. 23	146
Zebulin Smith	Correction Deed		June 13	147
J. W. Stillwell	May 16	148	May 18	149
	Apr. 19		Apr. 25	
Geo. L. Thompson	May 16	151	May 19	150

It is further stipulated and agreed by and between the parties hereto that the Court may on appeal refer to and consider the matters contained in this stipulation relating to the exhibits mentioned herein, as though said exhibits were transcribed at length into the record of this case.

Dated at Portland, Oregon, April 3d, 1911.

JOHN McCOURT,
United States Attorney.
JOHN LIND,
A. E. UELAND,
J. M. GEARIN,
Solicitors and Counsel for Defendants Linn & Lane Timber Company and C. A. Smith. **[1448]**

[Certificate of Clerk U. S. Circuit Court to Record.]

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, pursuant to the foregoing order allowing the appeal of Linn and Lane Timber Company and Charles A. Smith from the decree of said Court entered in the case of the United States of America, complainant, against Nils O. Werner and others, defendants, do hereby certify that the foregoing pages, numbered from two to 1448, inclusive, contain a true and complete transcript of the record directed by law to be made, and of the proofs, entries, and papers on file in said cause described or referred to in the foregoing stipulation between the parties to said appeal as to making up of said transcript of record, as the same appear of

record and on file at my office and in my custody. And I further certify that I have annexed to the foregoing transcript the original citation issued in said cause.

I further certify that the cost of the foregoing transcript is Seven hundred forty-three 30/100 dollars, and that the same has been paid by said appellant.

In Testimony Whereof, I have hereunto set my hand and *and* affixed the seal of said Court at Portland, in said District, this 3d day of April, A. D. 1911.

[Seal] G. H. MARSH,
Clerk. [1449]

[Endorsed]: No. 1973. United States Circuit Court of Appeals for the Ninth Circuit. The Linn & Lane Timber Company and Charles A. Smith, Appellants, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the District of Oregon.

Filed April 5th, 1911.

F. D. MONCKTON,
Clerk.

[Marshal's Return of Service of Subpoena ad Respondendum and Complaint upon Frederick A. Kribs.]

RETURN OF CIVIL PROCESS.

United States of America,
District of Oregon,—ss.

I hereby certify that on the 30th day of May, 1908, at Portland, Multnomah County, in said District I duly served the within Subpoena ad Respondendum upon the therein named Frederick A. Kribs, by delivering to him personally and in person a true copy of said Subpoena ad Respondendum, duly certified to by Clerk Circuit Court, together with a copy of the complaint in the within entitled action duly certified to by John McCourt, U. S. Attorney for said District.

CHARLES J. REED,
United States Marshal.
By W. B. Griffith,
Deputy.

United States of America,
District of Oregon,—ss.

I, G. H. Marsh, Clerk of the Circuit Court of the United States for the District of Oregon, do hereby certify that the foregoing copy of return of civil process upon defendant Frederick A. Kribs, has been by me compared with the original thereof, and that it is a correct transcript therefrom, and of the whole of such original as the same appears of record and on file at my office and in my custody.

And I further certify that the foregoing return of civil process is attached to, and is the return of service upon said defendant, Frederick A. Kribs, of the original Subpoena ad Respondendum issued out of said court on May 25, 1908, and returned into said court and filed on July 20, 1908, in the cause pending therein numbered 3320, in which the United States of America is complainant and Nils O. Werner, Frederick A. Kribs and others are defendants.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Portland, in said District, this 19th day of September, 1911.

[Seal] G. H. MARSH,
Clerk.

[Endorsed]: No. 1973. United States Circuit Court of Appeals for the Ninth Circuit. The Linn & Lane Timber Company and Charles A. Smith vs. The United States of America. Certified Copy of Marshal's Return for Service of Subpoena and Complaint on Frederick A. Kribs. Filed Sep. 22, 1911. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Printed Transcript of Record.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one thousand four hundred and forty-five (1445) pages, numbered from and including one (1) to and including one thousand four hundred and forty-five (1445), comprised in the preceding four (4) volumes, marked, respectively, Volume I, Volume II, Volume III and Volume IV, to be a full, true and correct copy of the Printed Transcript of Record upon Appeal from the United States Circuit Court for the District of Oregon, in the above-entitled case, as the original thereof remains on file and of record in my office, the said copy having been printed under my supervision pursuant to the provisions of the twenty-third rule of the Rules of Practice of the said Circuit Court of Appeals.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this seventeenth day of July, A. D. 1912.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON *Clerk.*

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

ADDENDA.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

At a Stated Term, To-wit, the October Term, A. D. 1911, of the United States Circuit Court of Appeals for the Ninth Circuit, Held in the Court-room Thereof, in the City and County of San Francisco, in the State of California, on Monday, the Thirtieth Day of October, in the Year of Our Lord One Thousand Nine Hundred and Eleven.

Present:

The Honorable William B. Gilbert, Circuit Judge,
Honorable Erskine M. Ross, Circuit Judge,
Honorable William W. Morrow, Circuit Judge.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Order of Submission.

Ordered, appeal in the above-entitled cause argued by Mr. John Lind, counsel for the appellants, and by Mr. United States Attorney John McCourt, counsel for the appellee, and submitted to the Court for consideration and decision.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1972.

THE LINN & LANE TIMBER COMPANY, CHARLES A. SMITH, CHARLES J. SWENSON and FREDERICK A. KRIBS, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee;

and

THE UNITED STATES OF AMERICA, Appellant,
vs.
S. A. SMITH, FREDERICK A. KRIBS, CHARLES J. SWENSON, O. JUDD MEALEY, Will Mealey, J. A. Thompson, George F. Mealey, Richard F. Malone, William J. Lawrence, Alexander Gound, John J. Gilliland, Louis Maynard, Joseph O. Mickalson, James W. Rozell, John Thomas Parker, Samuel D. Pickens, Sidney H. Scanland, Joseph H. Steingrandt, Cornelius N. Tuthill, Richard D. Watkins, Charles Wiley, William W. Billings, and Linn & Lane Timber Company, Appellees;

and

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Opinion U. S. Circuit Court of Appeals. Upon Appeal from the United States Circuit Court for the District of Oregon.

Before Gilbert, Ross, and Morrow, Circuit Judges.

These suits were brought by the Government to obtain decrees annulling patents theretofore issued for certain lands entered under the act of Congress known as the Timber and Stone Act (20 St. Lg. 89).

Case numbered 1972 involved seventeen patents, each covering a quarter-section of land situated in Linn County, Oregon. Eight of those patents were issued July 9th, 1902, and nine of them August 12th, 1902.

Case numbered 1973 involved twenty-eight patents, each covering a quarter-section of land in the same county and state, all of which patents were issued August 12th, 1902.

The suits were commenced in the court below on May 25th, 1908.

For the lands covered by the patents involved in case 1973 the filings were made in January and February, 1900, and final proofs

were made in April and May of the same year, all of the land covered thereby being at the time of, of within a few days after, the making of final proof conveyed by the applicants to one Willd in trust for the defendant C. A. Smith. Willd thereafter, and on November 2, 1900, conveyed the same land to one Greacen, who on February 11th, 1901, conveyed it to one Rogers, who, on December 21st, 1904, conveyed it to one Werner—all in trust for the defendant Smith, and all of which deeds were at the time of their execution placed of record, the legal title to the land standing in the name of Werner from the time of the conveyance of it to him until subsequently conveyed by him to the defendant Linn & Lane Timber Company, as hereinafter stated.

The entries involved in case 1972 were made in May, June, and July, 1900, and final proof was made in August and October of that year, about which time the land covered by them was conveyed by the several applicants to the defendant Kribs in trust for the defendant Smith—an undivided three-fourths of which Kribs, on the 24th of October, 1904, conveyed to Smith, and on December 28th of the same year conveyed the other undivided one-fourth to one Swenson in trust for Smith—all of which deeds were at the time of their execution filed for record. Subsequently those lands were also conveyed to the Linn & Lane Timber Company as hereinafter stated.

The defendant Smith, who was a manufacturer of lumber at Minneapolis, Minnesota, had previously acquired about 52,000 acres of other timber lands in Linn, Lane, and Douglas Counties of the State of Oregon. In May, 1906, he caused to be organized under the laws of the State of Minnesota the defendant corporation called Linn & Lane Timber Company, with a capital stock of one hundred thousand dollars, divided into one thousand shares of the par value of one hundred dollars each, for the purpose of taking and holding the title to the lands involved in these suits as well as the 52,000 acres theretofore acquired by him. Nine hundred and ninety-eight shares of the stock of the corporation were subscribed by Smith, and one share each by his wife and his attorney. The corporation was organized by the election of Smith as President, Johanna Smith, his wife, as vice-president, Vernon Smith, his son, as secretary, and Nan A. Smith, his daughter, as treasurer. Thereafter, and on June 4th, 1906, Smith tendered to the directors of the corporation, consisting of himself, his son, and his wife, a deed executed by himself and wife, covering all of his lands in the counties mentioned, in payment for the stock of the corporation, which deed was accepted by the directors; and on May 28th, and August 15th, 1907, respectively, Swenson and Werner, at Smith's request, conveyed the interests held by them to the same corporation, all of which deeds to the corporation were retained by Smith and not filed for record in the proper county until September 9th, 1908, more than six years after the issuance of the patents involved in the present cases.

To the original bill in case 1972, C. A. Smith, Frederick A. Kribs, Charles J. Swenson, and various other individuals were made defendants, and in case 1973 Smith, Kribs, Werner, and various other individuals were made parties defendant. Both bills charged that all of the entries were made in pursuance of a conspiracy, specific-

ally set out, to defraud the Government of the title to the lands covered thereby, and that Smith acquired the title to the lands involved with notice of such fraud. Subpœnas ad respondendum were issued upon the filing of the bills and placed in the hands of the Marshal for service, and were in due time served upon the resident defendants. Smith, Swenson and Werner were non-residents of the state of Oregon, and in July following the filing of the bills the Marshal returned the subpœnas without service upon them. On the 27th of that month, upon the application of the United States Attorney, a warning was issued to them, which was subsequently served. In September and October, 1908, Smith, Kribs, and Werner filed pleas in abatement, alleging that the property in question had been conveyed to and was owned by the Linn & Lane Timber Company prior to the commencement of the suits, and that it was therefore an indispensable party. On November 16th, 1908, the complainant filed an amended bill in each suit, making that company a party defendant, and subpœna was thereupon issued and placed in the hands of the Marshal for service upon its resident agent, and service duly made. The amended bills contained substantially the same allegations as the original bills, and the additional allegation that the Linn & Lane Timber Company was organized by C. A. Smith to consummate the fraudulent acquisition of title to the lands in question; that the deed from himself to the company was not in fact made until after the commencement of the suits, but was fraudulently ante-dated, and that all of the deeds were concealed and kept from record in pursuance of such fraudulent purpose. To the bills as amended answers were filed denying all of the averments of fraud and setting up as affirmative defenses that Smith and the Linn & Lane Timber Company were purchasers of the property in good faith and without notice of any fraud; that the decision of the Secretary of the Interior directing that the applications for the lands pass to patent is conclusive on the Government, and that the suits are barred by the Statute of Limitations because not commenced against the Linn & Lane Timber Company within six years from the date of the patents; replications were filed in due time and upon the issues joined the evidence was taken before the court below, upon which the judgments appealed from were given.

GILBERT, *Circuit Judge* (after stating the case):

A careful consideration of the record satisfied us that the learned judge of the court below was quite right in finding that all of the entries in question were fraudulent, and the proof in support of them false and fraudulent, and in holding that the defendant C. A. Smith, if not actually cognizant of the conspiracy in pursuance of which the entries and proofs were made, was at least bound by the acts of his agent, Kribs, who, according to the evidence, was an active participant in the frauds upon the Government. Smith, therefore, cannot be regarded as an innocent purchaser. He acquired, directly and through trustees, the title to all of the lands covered by the patents issued pursuant to the entries and proofs referred to, and afterwards, as the records show, conveyed and caused to be conveyed such title to the Linn & Lane Timber Company, a

Minnesota corporation, which he caused to be formed, himself subscribing for all of its capital stock with the exception of two shares, one of which was issued to his wife, and one to his attorney. That the legal title to all of the lands passed to the Linn & Lane Timber Company by virtue of the deeds executed to it is undisputed, and that that company was not made a party to the suits until more than six years after the issuance of the patents is also shown by the records. The important question in the cases, therefore, is whether the company's plea of the statute of limitations should be sustained. The court below sustained it in respect to the lands covered by the eight patents which were issued July 9th, 1902, on the ground that six years had run before suit could be considered as having been commenced against C. A. Smith, but not so with respect to the other patents involved. Treating Smith as the corporation, and the corporation as Smith, the court held that as respects all the patents that were issued within six years of the commencement of suit against Smith the plea of the statute was unavailing, saying, in its opinion:

"As a general rule the holder of the legal title is an indispensable party to a suit to set aside a patent (U. S. v. Winona & St. P. R., 67 Fed. 948; U. S. v. C. P. R. R., 11 Fed., 449), and the statute of limitations does not cease to run in his favor until he is made a party to the suit, and process issued and placed in the hands of the Marshal with a bona fide intent that it shall be served. Miller v. McIntyre, 6 Pet. 60. But the identity of Smith and the Linn & Lane Timber Company, and their relation to the title to the property in controversy, is such that I do not think the rule should be applied in this case. Smith is the real party in interest and the beneficial owner of the property. The corporation was organized by him as a mere holding concern. He owned all of its capital stock. He and the members of his family composed its board of directors, and were the officers of the corporation. In fact, Smith was the corporation, and the corporation was Smith. The question of the statute of limitations should be therefore determined by the time the suit was commenced against Smith and the holders of the record title, and not against the mere holding corporation."

The learned judge subsequently added, in his opinion: "I am aware that the soundness of this conclusion is not free from doubt, but I believe it to be in accordance with equity, justice and sound reason."

By its act of March 3, 1891 (26 St. Lg. 1093), Congress declared:

"That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents."

The testimony is that at the first meeting of the Board of Directors of the Linn & Lane Timber Company Smith laid before the board deeds to the company of certain timber lands in the State of Oregon executed by himself and wife and the proposition to deliver the same to the company and thereby vest title to the lands therein described in the company and accept as a full consideration for the same the entire unauthorized capital stock of the company

fully paid up and non-assessible, but no minutes or other testimony are offered to show that that proposition was accepted or that the deeds were delivered. The evidence is that the possession of the deeds never passed to the secretary of the corporation, who was Smith's son, a boy seventeen years of age, nor to any other officer of the corporation, and Trabert who was the secretary of the C. A. Smith Lumber Company, another of Smith's corporations, testified that from the time of their execution to the time of the first meeting of the Linn & Lane Timber Company the deeds were in his possession and that from and after that meeting they were kept by him in an envelope together with the articles of incorporation in the office of the C. A. Smith Lumber Company up to the time when they were recorded. He testified as to the reasons why he did not record the deeds, and Smith testified that one reason why he did not "want to record the deeds" was because he did not care to have newspaper notoriety. But, assuming that the deeds were in fact delivered to the corporation at the time of its first meeting of its board, it is clear that it should be held for the purpose of determining the question of the application of the statute of limitations that Smith was the corporation and the corporation was Smith. He organized the corporation. He owned all of the capital stock; he owned all of the lands. Before the corporation was organized and before the patents issued, he knew that the officers of the government were making investigation of the entries, and that there was talk of his indictment by a Federal Grand Jury. The corporation was organized in Minnesota "as a holding company" of lands in Oregon. Up to the time when the deeds were recorded, September 9, 1908, the corporation had never done any business, had never taken possession of the lands or exercised any act of ownership thereof, and there was nothing of record in any state or county office in Oregon to indicate that the corporation possessed any property in the state or had ever transacted any business therein. There can be no doubt that one at least of the purposes for which it was formed was to conceal fraudulently therein the titles to the lands which are the subject of this suit, and to keep the titles so concealed until the time when the Statute of Limitations should bar the anticipated suit of the government to set aside the patents. This is shown by the fact that the possession of the deeds which apparently were executed on June 4, 1906, May 28, 1907, and August 17, 1907, was retained by Smith, and that he withheld the deeds from record until three and a half months after the commencement of the suit, and by the further fact that up to the date of recording the deeds the taxes on the lands were assessed against and were paid by the grantors and not by the grantee, the corporation. "The fact that a deed is withheld from record or is otherwise concealed is a badge of fraud." 20 Cyc. 446, and cases there cited. In M'Alpine v. Hedges, 21 Fed. 689, it was said: "When a fraud is of a secret nature, and in the particular case has been conceived and executed upon such a plan as to secure continued secrecy, without further acts of concealment except silence, the statute ought not to run until there has been a discovery. In such a case it may well be said to have been a continuous concealment. The making of a fraudulent deed, and the keeping of it

off the record by all the persons concerned in and cognizant of the transaction, combined with their proposed silence upon the subject, it certainly will not do to say is not a concealment, for which relief may be granted." In McCaskill Co. v. United States, 216 U. S. 504, the court said: "A growing tendency is therefore exhibited in the courts to look beyond the corporate form to the purpose of it, and to the officers who are identified with that purpose," citing Cook on Corporations, Sections 663, 664, in which it is said: The disabilities of the corporation are not disabilities of the stockholders, nor are the disabilities of the stockholders the disabilities of the corporation. Hence it is that a corporation is often organized to act as a cloak for fraud. Such cases as these are becoming common and the courts are becoming more and more inclined to ignore the corporate existence when necessary in order to circumvent fraud." In re Rieger, etc., 157 Fed. 609, the court said: "The doctrine of corporate entity is not so sacred that a court of equity, looking through forms to the substance of things, may not in a proper case ignore it to preserve the rights of innocent parties or to circumvent fraud." In United States v. Milwaukee Refrigerator Transit Co., 142 Fed. 247, in which it was alleged that the corporation defendant was a dummy organized, owned and operated by the stockholders of a brewing company as a device to cover the receipt of rebates on interstate shipments of beer, the court said: "If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." In First National Bank v. F. C. Trebein Co., 59 Ohio St. 316, the court said: "The fiction by which an ideal legal entity is attributed to a duly-formed incorporated company, existing separate and apart from the individuals composing it, is of such general utility and application as frequently to induce the belief that it must be universal, and be in all cases adhered to, although the greatest frauds may thereby be perpetrated under the fiction as a shield. But modern cases, sustained by the best text-writers, confine the fiction to the purposes for which it was adopted,—convenience in the transaction of business and in suing and being sued in its corporate name, and the continuance of its rights and liabilities, unaffected by changes in its corporate members,—and have repudiated it in all cases where it has been insisted on as a protection to fraud or any other illegal transaction." And in State v. Standard Oil Co., 49 Ohio St. 137, the same court said: "On a question of this kind, the fact must constantly be kept in view that the metaphysical entity has no thought or will of its own; that every act ascribed to it emanates from and is the act of the individuals personated by it; and that it can no more do or act, or refrain from doing it, contrary to the will of these natural persons than a house can be said to act independently of the will of its owner; and, where an act is ascribed to it, it must be understood to be the act of the persons associated as a corporation, and, whether

done in their capacity as corporators or as individuals must be determined by the nature and tendency of the acts."

If in any conceivable case a court of equity should look through the form to the substance, it should do so in a case like this. The corporation is Smith. It is Smith seeking shelter behind articles of incorporation and invoking the legal fiction of a corporate entity for his protection in the perpetration of a fraud. Said Lord Mansfield in Johnson v. Smith, 2 Burr. 962: "The court would not endure that a mere form or fiction of law, introduced for the sake of justice, should work a wrong contrary to the real truth and substance of the thing." Says Morawetz in his work on corporations, sec. 227: "The statement that a corporation is an artificial person or entity, apart from its members, is merely a description in figurative language, of a corporation viewed as a collective body. A corporation is really an association of persons, and no judicial dictum or legislative enactment can alter this fact."

In addition to the foregoing, we think there is other ground on which the judgment of the court below may be sustained. The decision in United States v. Winona, etc., R. R., 165 U. S. 463, should not be taken as deciding that no fraud committed by the owner of patented land after the issuance of patent can toll the statute of limitations. No such question was involved in that case, and indeed no question at all of the application of the statute of limitations, and we submit that it was not the intention to overrule Bailey v. Glover, 21 Wall. 342. In that case the statute of limitations was as absolute as that which is invoked in the present case. It was Section 5057 of the Revised Statutes, providing: "No suit, either at law or in equity, shall be maintainable in any court between an assignee in bankruptcy, and a person claiming an adverse interest, touching any property or rights of property transferable to or vested in such assignee, unless brought within two years from the time when the cause of action accrued for or against such assignee." Glover fraudulently intending to take advantage of the bankruptcy law secretly conveyed property to members of his family. The assignee in bankruptcy, more than three years after his appointment, having ascertained the facts, brought suit to set aside the conveyances. The court held that the bar did not commence to run until the fraud was discovered. Mr. Justice Miller, for the Court, said: "We also think that in suits in equity the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party." Speaking of the principles of the statutes of limitations, the learned justice said: "They were enacted to prevent frauds; to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which should show that such rights never existed, or had been satisfied, transferred, or extinguished, if they ever did exist. To hold that by concealing a fraud,

or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure." The doctrine of that case has been reaffirmed in numerous subsequent decisions. In Rosenthal v. Walker, 111 U. S. 185, the court said: "The case of Bailey v. Glover has often been cited by the court but has never been doubted or qualified." No distinction between the statute of limitations involved in that case and that which is involved in the present case is to be found in the fact that in the former the time is limited from the date when the "cause of action accrued." In Gifford v. Helms, 98 U. S. 248, construing that statute, the court said that the cause of action accrued on the appointment of the assignee or trustee in bankruptcy.

What was said by this court in United States v. American Lumber Company, 85 Fed. 827, was in answer to the contention that the statute of limitations should be liberally construed in favor of the government so as to hold its effort to commence the action equivalent to a commencement thereof within the time limited by the statute. There was in the case no question of fraud or of a fraudulent concealment of a conveyance.

It is suggested that the fraudulent transaction should be upheld in this case for the reason that a small portion of the stock of the corporation has been purchased by an innocent third party and that a portion of the stock has been pledged as security for a loan. But it has never been held that a corporation which is not itself an innocent purchaser of property can defend a suit to recover the property on the ground that its stockholders subscribed to or purchased their stock in good faith and in ignorance of fraud. The contrary has been held by this court in Wilson Coal Co. v. United States, 188 Fed. 545. In Cawthra v. Stewart, 109 N. Y. Sup. 770, it was held that one induced by the fraud of the president of the corporation who owns and controls its entire stock to subscribe for stock may sue the corporation for a rescission of the contract and for the recovery of the amount paid for the stock. In that case Stewart, who owned 98 shares of stock of the corporation and controlled the remaining two shares, and was its president, made fraudulent representations to a third person, and the corporation accepted and retained the proceeds of the fraud with knowledge thereof. It was held that the corporation could not avoid liability on the ground that it did not know of the fraudulent representations until after they had been made, and that it did not authorize the making of them. The court said: "It is urged in behalf of the demurrant that it is not a party to the contract in suit, that the defendant Stewart was not its agent, and that it had no part in the fraud; in other words, that the defendant Stewart is one person, and that the defendant corporation is an entirely separate, distinct and definite legal entity, and is not bound by or liable for any acts or omissions of the former which it has not authorized. * * * We do not have a case of agency, but of identity. It cannot properly be said that the corporation could clothe Stewart with authority any more

than that Stewart could clothe himself with authority. He was the corporation, and it was only another form of him."

The decree is affirmed.

(Endorsed:) Opinion, U. S. Circuit Court of Appeals. Filed May 20, 1912. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the District of Oregon.

This Cause came on to be heard on the Transcript of the Record from the Circuit Court of the United States for the District of Oregon and was duly submitted.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed and Entered May 20, 1912, F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Petition for Appeal to Supreme Court U. S.

The above named appellants, The Linn & Lane Timber Company and Charles A. Smith, conceiving themselves aggrieved by the order and decree entered in the above entitled cause on the 20th day of May, 1912, affirming the decree of the Circuit Court of the United States for the District of Oregon, hereby appeal from said order and decree of affirmance to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and pray that the appeal be allowed and that a

transcript of the record, proceedings and papers upon which said order and decree of affirmance were made, duly authenticated, may be sent to the said Supreme Court of the United States, and your petitioners pray that said order and decree of affirmance, and the said decree of the Circuit Court of the United States for the District of Oregon may be reviewed and reversed.

Dated, June 17th, 1912.

(Signed) JOHN LIND,
(Signed) A. UELAND,
(Signed) W. M. JEROME,
(Signed) JOHN M. GEARIN,

Solicitors and Counsel for said Appellants, The Linn & Lane Timber Company and Charles A. Smith.

(Endorsed:) Petition for Appeal to Supreme Court U. S. Filed June 24, 1912. Frank D. Monckton, Clerk, By Meredith Sawyer, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Affidavit of Andreas Ueland of Value in Dispute.

STATE OF MINNESOTA,
County of Hennepin, ss:

Before the undersigned, a Notary Public in and for said County, personally appeared Andreas Ueland, who being by me duly sworn, upon his oath, says that he is one of the solicitors and counsel of record of the Linn & Lane Timber Company and Charles A. Smith, the appellants in said cause, and that the matter in controversy in said cause exceeds One Thousand ($1000) Dollars besides costs.

(Signed) A. UELAND.

Subscribed and sworn to before me this 15th day of June, 1912.

[SEAL.] (Signed) ALICE L. KERCHER,
Notary Public, Hennepin Co., Minn.

My commission expires June 22, 1913.

(Endorsed:) Affidavit of Value in Dispute. Filed June 24, 1912, Frank D. Monckton, Clerk, By Meredith Sawyer, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Assignment of Errors.

The appellants, The Linn & Lane Timber Company and Charles A. Smith, assert that said United States Circuit Court of Appeals erred in rendering the decree entered in the above entitled cause on the 20th day of May, 1912, affirming the decree of the Circuit Court of the United States for the District of Oregon, because the decree so affirmed was erroneous in the following particulars, to-wit:

(1) In declaring void, cancelling, annulling and setting aside the twenty-eight patents of August 12th, 1902, described in the decree. This was error because the suit was barred by an Act of Congress of March 3d, 1891, 26 St. L. 1093, the same not having been commenced against the Linn & Lane Timber Company, the owner of the title granted by the patents, within six years after the date of the patents, as required by said act.

(2) In declaring the deeds and conveyances described in the bill to be in fraud and violation of, and subject to some right of the complainant, and cancelling, annulling and setting aside such deeds and conveyance.

(3) In enjoining and restraining defendant, The Linn & Lane Timber Company, its agents, servants and employees, from asserting, exercising or exerting any authority or control over the lands described in the decree, or any of them, or over or in relation to the title to said lands, or any part thereof, by virtue of the deeds and conveyances of said lands described in the bill.

(4) In declaring the lands described in the decree to be the property of the complainant in fee simple, divested of all right, title or estate in law or equity claimed or asserted by defendant, The Linn & Lane Timber Company.

(5) In declaring that complainant is entitled to the immediate possession of all of the lands described in the decree.

(6) In failing to dismiss the bill. This was error because the suit was barred by the Act of Congress of March 3d, 1891, 26 St. L. 1093, the same not having been commenced against The Linn & Lane Timber Company, the owner of the title granted by the patents described in the decree, within six years after the date of the patents, as required by said Act.

(7) In not dismissing the bill because of failure to prove the conspiracy charge therein against Charles A. Smith, or Nils O. Werner, or Robert F. Greacen, or Hubert F. Rogers, or Frederick A. Kribs, or John A. Wild, or S. A. D. Puter.

(8) In not dismissing the bill because of complainant's failure

to prove that Charles A. Smith, when he purchased the land described in the decree, had notice of some of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands.

(9) In not dismissing the bill on the ground that Charles A. Smith, for a full and adequate consideration, had purchased the lands described in the decree from the persons who had entered and purchased the same from the complainant, with no notice or knowledge of any of the alleged conspiracies, frauds or irregularities complained of in the bill in connection with the entries on said lands, but in good faith, believing said persons could rightfully and lawfully sell and convey said lands, and had thereafter, before the commencement of the suit, conveyed said lands to The Linn & Lane Timber Company.

(10) In not dismissing the bill on the ground that the entries of the lands described in the decree had been fully investigated under the direction of complainant's Secretary of the Interior, by officers of his department, with reference to all the alleged conspiracies, frauds and irregularities complained of in the bill in connection with said entries, and that after such investigation, on the evidence adduced said Secretary had determined and decided said entries to be in all respects lawfully made and valid, and had thereupon directed the patents described in the bill and decree to be issued.

(11) In not dismissing the bill as to the land granted by the patent to Sadie E. Puter instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Sadie E. Puter to purchase said land under the provisions of the Act of Congress of June 3rd, 1878 (20 St. L. 89) was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(12) In not dismissing the bill as to the land granted by the patent to Elvira Jacobs instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Elvira Jacobs to purchase said land under the provisions of the Act of Congress of June 3rd, 1879 (20 St. L. 89) was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(13) In not dismissing the bill as to the land granted by the patent to H. C. Barr instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said H. C. Barr to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(14) In not dismissing the bill as to the land granted by the patent to S. A. D. Puter instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said S. A. D. Puter to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89) was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(15) In not dismissing the bill as to the land granted by the

patent to John J. Jaggy instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said John J. Jaggy to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89) was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(16) In not dismissing the bill as to the land granted by the patent to Neal D. Dozier instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Neal D. Dozier to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(17) In not dismissing the bill as to the land granted by the patent to Zebulin Smith instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of Neal D. Dozier to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89) was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(18) In not dismissing the bill as to the land granted by the patent to Thomas Wilson instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Thomas Wilson to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(19) In not dismissing the bill as to the land granted by the patent to John L. Green instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said John L. Green to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89) was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(20) In not dismissing the bill as to the land granted by the patent to J. S. Phillips instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said J. S. Phillips to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(21) In not dismissing the bill as to the land granted by the patent to Charles Burley instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Charles Burley to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(22) In not dismissing the bill as to the land granted by the patent to Charles Barr instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Charles Barr to purchase said land under

the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(23) In not dismissing the bill as to the land granted by the patent to Edward Finley instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Edward Finley to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(24) In not dismissing the bill as to the land granted by the patent to Douglas Adkinson instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Douglas Adkinson to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(25) In not dismissing the bill as to the land granted by the patent to Harry Saltmarsh instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Harry Saltmarsh to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(26) In not dismissing the bill as to the land granted by the patent to Jennie Moulton instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Jennie Moulton to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(27) In not dismissing the bill as to the land granted by the patent to George L. Thompson instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said George L. Thompson to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(28) In not dismissing the bill as to the land granted by the patent to Isaac R. Borum instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Isaac R. Borum to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(29) In not dismissing the bill as to the land granted by the patent to Benjamin F. Kirk instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Benjamin F. Kirk to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(30) In not dismissing the bill as to the land granted by the patent to Hugh Blakely instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Hugh Blakely to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(31) In not dismissing the bill as to the land granted by the patent to James B. Cooley instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said James B. Cooley to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(32) In not dismissing the bill as to the land granted by the patent to Frank W. Burford, instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Frank W. Burford to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(33) In not dismissing the bill as to the land granted by the patent to John Harrison instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said John Harrison to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(34) In not dismissing the bill as to the land granted by the patent to Henry B. Blakely instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Henry B. Blakely to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(35) In not dismissing the bill as to the land granted by the patent to Peter Buffington instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Peter Buffington to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(36) In not dismissing the bill as to the land granted by the patent to Jacob W. Stillwell instead of declaring the patent void. This was error because the evidence did not show that the duplicate written statement of said Jacob W. Stillwell to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

(37) In not dismissing the bill as to the land granted by the patent to Elam Miller instead of declaring the patent void. This was error because the evidence did not show that the duplicate

written statement of said Elam Miller to purchase said land under the provisions of the Act of Congress of June 3d, 1878 (20 St. L. 89), was made or filed fraudulently or contrary to any of the requirements of Section 2 of said Act.

Wherefore The said Linn & Lane Timber Company and Charles A. Smith pray that said decree of the United States Circuit Court of Appeals and said decree of the Circuit Court of the United States for the District of Oregon be reversed.

Dated June 17th, 1912.

(Signed) JOHN LIND,
(Signed) A. UELAND,
(Signed) W. M. JEROME,
(Signed) JOHN M. GEARIN,

Solicitors and Counsel for Appellants, The Linn & Lane Timber Company and Charles A. Smith.

(Endorsed:) Assignment of Errors. Filed June 24, 1912. Frank D. Monckton, Clerk, By Meredith Sawyer, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Order Allowing Appeal to Supreme Court U. S. and Fixing Amount of Bond on Appeal.

On this 21st day of June, 1912, came the Linn & Lane Timber Company and Charles A. Smith, the appellants in the above entitled cause, and filed here and presented to this court their petition for the allowance of an appeal from the order and decree made and entered in said cause on the 20th day of May, 1912, together with the assignment of errors, and praying that a transcript of the record, proceedings and papers upon which said order and decree were made, duly authenticated, may be sent to the Supreme Court of the United States; and it appearing that the matter in controversy in said cause exceeds One Thousand ($1000) Dollars beside costs,

In consideration whereof this Court does hereby allow the said appeal of said appellants, The Linn & Lane Timber Company and Charles A. Smith, from said order and decree upon said appellants giving a bond according to law and the rules of said Supreme Court

in the sum of five hundred Dollars to answer all damages and costs, if they shall fail to sustain their said appeal.

(Signed) WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed:) Order Allowing Appeal to Supreme Court U. S. and Fixing Amount of Bond on Appeal. Filed June 24, 1912, F. D. Monckton, Clerk, By Meredith Sawyer, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Supersedeas Order.

This cause coming on to be heard this 24th day of June, 1912, upon the application of the appellants for an appeal to the Supreme Court of the United States, and said appeal having been allowed, it is ordered that the same shall operate as a supersedeas, the appellants having executed bond in the penalty of five hundred—500—Dollars, as provided by law, and the Clerk is hereby directed to stay the mandate to the United States Circuit (now District) Court until the further order of this Court.

(Signed) WM. B. GILBERT,
Judge United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed:) Supersedeas Order. Filed June 26, 1912, F. D. Monckton, Clerk, By Meredith Sawyer, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Bond on Appeal to Supreme Court U. S.

Know all men by these presents That we, The Linn & Lane Timber Company and Charles A. Smith, as principals, and The United States Fidelity and Guaranty Company of Baltimore, as surety, are held and firmly bound unto the United States of America in the

full and just sum of five hundred—500—Dollars to be paid to the said United States of America, its attorneys or assigns, for which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 21st day of June, 1912.

Whereas on the 20th day of May, 1912, upon an appeal in the United States Circuit Court of Appeals for the Ninth Circuit from a decree of the Circuit Court of the United States for the District of Oregon in which the said Linn & Lane Timber Company and Charles A. Smith were the appellants and the said United States of America appellee, an order and decree was entered by the said United States Circuit Court of Appeals affirming the decree appealed from; and

Whereas said Linn & Lane Timber Company and Charles A. Smith have obtained from said United States Circuit Court of Appeals an order allowing an appeal to the Supreme Court of the United States to reverse the aforesaid order and decree of affirmance, and a citation directed to said United States of America is about to be issued citing and admonishing it to be and appear before the said Supreme Court of the United States to be holden at Washington in the District of Columbia,

Now the condition of the above obligation is such that if the said Linn & Lane Timber Company and Charles A. Smith shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good, then the above obligation is to be void, otherwise to remain in full force and virtue.

LIN*D* & LANE TIMBER COMPANY,

(Signed) By A. UELAND,
Its Solicitor and Counsel.

CHARLES A. SMITH, [SEAL.]

(Signed) By A. UELAND,
His Solicitor and Counsel.

UNITED STATES FIDELITY & GUARANTY CO.,

[SEAL.] (Signed) By H. V. D. JOHNS,
Attorney-in-Fact,

(Signed) By W. L. ALEXANDER,
Attorney-in-Fact.

This bond approved as to form, amount and sufficiency of sureties this 24th day of June, 1912.

(Signed) WM. B. GILBERT, *Judge.*

(Endorsed:) Bond on Appeal to Supreme Court U. S. Filed June 26, 1912, F. D. Monckton, Clerk, By Meredith Sawyer, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY & CHARLES A. SMITH,
Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Præcipe for Transcript on Appeal to Supreme Court U. S.

To the Clerk of said Court.

SIR: Please make return to the Supreme Court of the United States upon the appeal to said court by the above named appellants in the above entitled cause and let the return consist of (*a*) the printed transcript of record, (*b*) the order of submission, (*c*) the opinion, (*d*) the decree, (*e*) the petition for appeal, (*f*) the affidavit of value in dispute, (*g*) the assignment of errors, (*h*) the order allowing appeal and fixing amount of bond, (*i*) the bond on appeal, (*j*) the supersedeas order, (*k*) the original citation on appeal, (*l*) Proper certificates as to said printed transcript of record and said other *preceding* and papers.

Dated July 13th, 1912.

(Signed) JOHN LIND,
(Signed) A. UELAND,
(Signed) W. M. JEROME,
Counsel for said Appellants.

(Endorsed:) Præcipe for Transcript on Appeal to Supreme Court U. S. Filed July 16, 1912. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 1973.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH,
Appellants,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-four (44) pages, numbered from and including one (1) to and including forty-four (44), to be a true copy of the Assignment of Errors and of all Proceedings had in the above-entitled case in the said United States Circuit Court of Appeals for the Ninth Circuit, including the Opinion filed therein, as the same remain on file and of record in my office, and that the same in connection

with the preceding Certified Copy of the Printed Transcript of Record, constitute a true copy of the complete record prepared pursuant to the præcipe therefor, filed by counsel for the appellants on the 16th day of July, A. D. 1912, in the above-entitled case and constitute the Transcript of Record upon the appeal taken therein from the said Circuit Court of Appeals to the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this seventeenth day of July, A. D. 1912.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

In the United States Circuit Court of Appeals for the Ninth Circuit.

THE LINN & LANE TIMBER COMPANY and CHARLES A. SMITH, Appellants,

vs.

THE UNITED STATES OF AMERICA, Appellee.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, and to John McCourt, United States Attorney, acting for and in behalf of the United States of America, Greeting:

You are hereby notified that in that certain cause in the United States Circuit Court of Appeals, in and for the Ninth Circuit, wherein the Linn & Lane Timber Company and Charles A. Smith are appellants, and the United States of America is appellee, an appeal has been allowed appellants therein to the Supreme Court of the United States;

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within sixty (60) days from the date hereof, to show cause, if any there be, why the decree rendered against the said appellants and in favor of the appellee should not be corrected and speedy justice done the parties in that behalf.

Witness, the Honorable William B. Gilbert, Judge of the United States Circuit Court of Appeals, for the Ninth Circuit, this 26 day of June, A. D. 1912.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

WM. B. GILBERT,

Judge of the United States Circuit Court of Appeals.

Attest:

Jun- 28, 1912.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit,

By MEREDITH SAWYER,

Deputy Clerk.

Due service and receipt of a copy of the within Citation is hereby admitted this 3rd day of July 1912.

JOHN McCOURT,
Attorney for United States of America.

[Endorsed:] Docketed. No. 1973. In the United States Circuit Court of Appeals, for the Ninth Circuit. The Linn & Lane Timber Company, et al., Appellants, vs. The United States of America, Appellee. Citation. Filed Jul- 9, 1912. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit. Denman and Arnold, Attorneys at Law, Proctors in Admiralty, 1020 Merchants Exchange Building, San Francisco, California.

Endorsed on cover: File No. 23,325. U. S. Circuit Court of Appeals, 9th Circuit. Term No. 750. The Linn & Lane Timber Company and Charles A. Smith, appellants, vs. The United States. Filed August 5, 1912. File No. 23,325.

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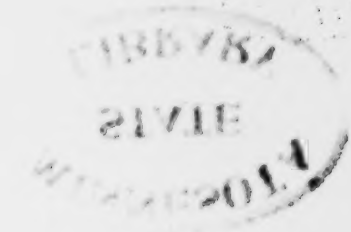

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In the Supreme Court of the United States.

October Term, 1913.

Office Supreme Court, U.
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THE LINN & LANE TIMBER COMPANY AND CHARLES A. SMITH, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA,
APPELLEE.

MINNESOTA STATE LIBRARY

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF RESPECTING STATUTE OF LIMITATIONS.

JOEL F. VAILE,
HENRY MCALLISTER, JR.
Amici Curiæ.

INDEX

	Page
STATEMENT	1
STATUTE IN CONTROVERSY	2
ARGUMENT (points discussed)	3-4
I HISTORY OF ACTS OF 1891 AND 1896	5
II STATUTE MEANS WHAT IT SAYS; ITS CONSTRUCTION BY THIS COURT	13
III BAILEY VS. GLOVER, AND OTHER DECISIONS CONSTRUING STATUTES RUNNING FROM "ACCRUING OF CAUSE OF ACTION," NOT APPLICABLE	22
(1) *English cases considered—statutes there involved not in terms applicable to suits in equity*	22
(2) *"Cause of Action does not accrue" until fraud discovered, etc.*	24
(3) *This principle evidenced by statutes adopting it*	29
(4) *Principle does not apply to such statutes as this, decisions of national courts*	31
(5) *Congress aware of this equitable principle and intended to depart from it*	37
IV THE LIMITATION PROVISION AS TO PATENTS ISSUED BEFORE THE PASSAGE OF ACT, ETC	44
V DISCUSSION OF U. S. VS. EXPLORATION CO., 203 FED., 387	48

TABLE OF CASES

Bailey vs. Glover, 21 Wallace, 342 ..... 25, 26, 32, 38, 39, 48
Bate Refrigerating Co. vs. Sulzberger, 157 U. S., 1 ..... 12, 16
Bond vs. Hopkins, 1 Sch. & Lef., 413 23
Brown, In re, 19 N. B. R., 312 ..... 31, 34
Carr vs. Hilton, 1 Curtis, 230 ..... 26, 27
Dewey vs. U. S., 178 U. S., 510 15
Ecclesiastical Comm'rs. vs. Northeastern Ry. Co., L. R. 4 Ch. Div., 845 ..... 24, 30
First Mass. Turnpike Co. vs. Field, 3 Mass., 201 29
Goodridge vs. U. P. Ry. Co., 35 Fed., 35 ..... 26, 29
Herzig, Matter of, 15 Abb. New Cases, 179 ..... 31, 35
Hovenden vs. Lord Annesley, 2 Sch. & Lef., 607 23
Kinder vs. Scharff, 231 U. S., 517 ..... 36, 37
Kirby vs. Lake Shore R. R., 120 U. S., 130 ..... 26, 28, 38
Lapina vs. Williams, 232 U. S., 78 10
Leffingwell vs. Warren, 2 Black, 599 13

Page

Louisiana vs. Garfield, 211 U. S., 70 ..... 16, 20
Mall & Co. vs. Ullrich, 37 Fed., 653 ..... 31, 36
Norris vs. Haggin, 28 Fed., 275 ..... 26, 27
Pickett vs. McGavick, 14 N. B. R., 236 ..... 31, 33
Pirie vs. Chicago T. & T. Co., 182 U. S., 438 ..... 38, 51
Scott vs. Reid, 10 Peters, 524 16
Sherwood vs. Sutton, 5 Mason, 143 26
U. S. vs. Cerecedo etc. Compania, 209 U. S., 337 12
U. S. vs. Chandler-Dunbar Co., 152 Fed., 28 18
U. S. vs. Chandler-Dunbar Co., 209 U. S., 447 ..... 16, 19, 21
U. S. vs. Exploration Co., 190 Fed., 405 ..... 2, 20
U. S. vs. Exploration Co., 203 Fed., 387 ..... 1, 21, 30, 48, 49
U. S. vs. Goldenberg, 168 U. S., 95 15
U. S. vs. Healey, 160 U. S., 136 12
U. S. vs. Union Pacific R. R. Co., 148 U. S., 562 12
U. S. vs. Winona R. R. Co., 165 U. S., 463 ..... 16, 21, 54

OTHER CITATIONS

Congressional Record, Vol. 28, part 2, p. 1761 10
Congressional Record, Vol. 28, part 2, p. 1762 ..... 7, 8
Congressional Record, Vol. 28, part 2, p. 1763 6
Congressional Record, Vol. 28, part 2, p. 1935 10
Congressional Record, Vol. 28, part 2, p. 1937-8 11
Messages of Presidents, Vol. 9, p. 660 8
Wood on Limitations, Vol. 2, p. 749 30
Wood on Limitations, Vol. 2, p. 963 22
Wood on Limitations, Vol. 2, p. 972 30

In the Supreme Court of the United States.

October Term, 1913.

No. 324.

THE LINN & LANE TIMBER COMPANY AND CHARLES A. SMITH, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

Appeal from the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF RESPECTING STATUTE OF LIMITATIONS.

Our interest in this case arises because of our representation of appellees in the suit of *United States vs. Exploration Company, Limited*, decided by the Circuit Court of Appeals of the Eighth Circuit in January, 1913 (203 Fed., 387; 121 C. C. A., 491). The opinion and decree of that court reversed a decree of the District Court for Colorado, sustaining the demurrer of the defendants to the bill of complaint,

because such bill showed upon its face that the suit was brought more than six years after the dates of the issuance of the patents sought to be annulled (*U. S. vs. Exploration Co., Ltd.*, 190 Fed., 405).

An appeal to this court from the decree of the Court of Appeals could not be taken, because such decree was not final, the case being remanded to the District Court, with instructions to overrule the demurrer and to take further proceedings. Unless and until a final decree is entered in the trial court in that case an appeal cannot be perfected which will ultimately find its way to this court.

This brief is filed solely upon the one question of the meaning and construction of the federal statute of limitations relative to suits brought to annul the issuance of land patents.

THE STATUTE IN CONTROVERSY.

The original statute limiting the time for instituting suits to vacate and annul patents was contained in section 8 of an act of Congress entitled "An Act to Repeal Timber-Culture Laws, and for other purposes," approved March 3, 1891, and read (the italics being ours):

"That suits by the United States to vacate and annul any patent *heretofore* issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents *hereafter* issued shall only be brought *within six years after the date of the issuance of such patents.*" (26 Stat., 1095, 1099.)

This section 8 was amended by an act passed by the same Congress and approved on the same day (March 3, 1891), wherein the exact language above quoted was repeated. (26 Stat., 1093.)

Later, and by an act approved March 2, 1896, whose object was to extend the time limit for attacking certain patents, it was provided as follows (the italics again being ours):

"That suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant, shall only be brought within five years from the passage of this Act, *and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents,* and the limitation of section eight of chapter five hundred and sixty-one of the acts of the second session of the Fifty-first Congress and amendments thereto (*supra*) is extended accordingly as to the patents herein referred to. But no patent to any lands held by a *bona fide* purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed." (29 Stat., 42.)

ARGUMENT.

We take the position that the foregoing statute means what it says—namely, that suits to vacate and cancel patents "shall only be brought within six years after the date of the issuance of such patents." Our views upon this subject will be expressed under the following heads:

I. THE HISTORY OF THE ORIGIN AND ENACTMENT OF THIS ACT OF CONGRESS INDICATES THAT IT WAS INTENDED TO AFFECT PATENTS SECURED THROUGH FRAUD OR OTHER ILLEGALITY, WHICH MIGHT BE CONCEALED; AND THE FAILURE OF THE CONGRESS TO INSERT ANY EXCEPTING CLAUSE PROTECTING THE GOVERNMENT IN THE CASE OF CONCEALED OR UNKNOWN FRAUD INDICATES THAT NO SUCH EXCEPTION WAS INTENDED.

II. THE STATUTE MEANS WHAT IT, IN PLAIN TERMS, SAYS. CONSTRUING IT, THIS COURT HAS HELD THAT THE LAPSE OF SIX YEARS FROM "THE DATE OF THE ISSUANCE" OF THE PATENT, WITHOUT SUIT, TAKES AWAY THE RIGHT AS WELL AS THE REMEDY; EVEN VOID PATENTS ARE THEREBY FOREVER VALIDATED; *a fortiori*, PATENTS MERELY VOIDABLE BECAUSE OF FRAUD OF ANY CHARACTER CAN NEVER THEREAFTER BE CHALLENGED. THE ONLY OPEN QUESTION IS WHETHER THE LAND WAS PUBLIC LAND OF THE UNITED STATES, AND OPEN TO SALE AND CONVEYANCE THROUGH THE LAND DEPARTMENT, AT THE TIME THE PATENT ISSUED.

III. THE PRINCIPLE OF BAILEY VS. GLOVER AND KINDRED CASES—THAT WHERE THE STATUTE OF LIMITATIONS PRESCRIBES A LIMIT AFTER "THE CAUSE OF ACTION ACCRUES" FOR THE INSTITUTION OF SUIT, TIME DOES NOT BEGIN TO RUN UNTIL DISCOVERY OF THE FRAUD, PARTICULARY CONCEALED FRAUD—IS BASED ON THE THEORY THAT UNTIL SUCH DISCOVERY THE CAUSE OF ACTION DOES NOT ACCRUE. THIS HAS BEEN SO HELD BY THIS AND THE LOWER FEDERAL COURTS, AND IS EVIDENCED BY STATUTORY ENACTMENTS. THAT PRINCIPLE DOES NOT APPLY TO A STATUTE SUCH AS THE ONE IN QUESTION, AS VARIOUS NATIONAL COURTS HAVE DETERMINED.

IV. The provision in the statute relative to patents issued before the passage of the act makes it impossible in such instances to apply the argument that a statute of limitations may run in certain cases from the discovery of the fraud. The same construction must be given to the entire statute.

V. Some discussion of the decision of the Court of Appeals in United States vs. Exploration Co., Ltd., 203 Fed., 387.

The italics used in quotations from opinions are largely ours.

I.

The history of the origin and enactment of this act of Congress indicates that it was intended to affect patents secured through fraud or other illegality, which might be concealed; and the failure of the Congress to insert any excepting clause protecting the government in the case of concealed or unknown fraud indicates that no such exception was intended.

Careful examination of the proceedings of the Congress leading up to the passage of the original act of March 3, 1891, and the amendment of the same day, discloses that this limitation section was not the subject of any recorded report or debate. But prior to the passage of the act of March 2, 1896, there was extensive discussion of the 1891 act by the President, the officials of the Interior Department, and the Congress.

We propose to refer thereto for this reason: If Congress had in mind, as we shall demonstrate it did, that patents induced by fraud (which necessarily must remain concealed for some period of time after issuance of the patents) were within the scope not only of the proposed legislation, but of an act which had been operative for five years, and yet made no excepting provision respecting the time of discovery of the fraud, but on the contrary continued the initial date of the six-year period as the "date of the issuance" of the patent, then it is manifest that no such exception was intended by it or should be ingrafted upon the statute by the judicial department.

It will be observed that the act of March 3, 1891, covered not only patents thereafter issued, but also patents *theretofore* issued, and as to the latter, suit should only be brought within five years from the passage of the act; namely, on March 3, 1891. This five-year period expired on March 3, 1896. Shortly prior to that date the commissioner of the General Land Office addressed a letter to the Secretary of the Interior, dated December 18, 1895, and found in Volume 28, Part 2, page 1763 of the Congressional Record. Thereby the commissioner called attention to the fact that the department had been engaged for a long time in adjusting grants by patent to aid in the construction of railroads, and in recovering title for the United States to such lands which had been erroneously patented; that this work was of great magnitude and could not be concluded in time to institute any necessary action within the five-year period specified by the act of Congress. He therefore suggested that this time be extended. Thereupon the

Secretary of the Interior in turn addressed a letter to President Cleveland, calling attention to the same matters, and saying:

"It is submitted, with due respect, that the legislation of Congress establishing this limitation against the Government is an innovation utterly inconsistent in my opinion, with the theory of our institutions, and seems likely to result almost entirely in benefiting the interests of the corporations and adversely to those of the Government. From time immemorial it has been held that limitations did not bar the sovereign power from the assertion of a right. And in this country the highest judicial tribunals have uniformly held that laches was not to be imputed to the Government, which could only act through its agents. But in this matter *the Government is barred from righting the wrongs, whether intentional or inadvertent, perpetrated by those agents against the people at large, by which much of the public property has been perverted to corporate uses.*

* * * * * * *

Under these circumstances it seems to me that the act of 1891 should be so amended as not to apply to suits brought to recover title to lands certified or patented on account of railroad or other grants. And I respectfully request that you urge upon Congress to take speedy action, as suggested, that there may be no delay in the adjustment of these grants and no bar, by lapse of time, against the right of recovery by the Government in a proper case."

Congressional Record, Vol. 28, Part 2, p. 1762.

President Cleveland thereupon sent a message to Congress, submitting the two letters above mentioned, and inviting its attention to the necessity for prompt legislation, in order to remove the limitation of time

within which suits might be brought against patents issued prior to March 3, 1891, and said, *inter alia:*

"The Government should not be prevented from going into the courts *to right wrongs perpetrated by its agents or any other parties*, and by which much of the public domain may be diverted from the people at large to corporate uses.

In these circumstances it seems to me that the act of 1891 should be so amended as not to apply to suits brought to recover title to lands certified or patented on account of railroad or other grants."

Congressional Record, Vol. 28, Part 2, p. 1762.

Messages, etc., of the Presidents, Vol. 9, p. 660.

It will be noted from the italicized portions of the communications of the Interior officials and the President that special reference was made therein to the hardship endured by the government from "wrongs perpetrated by its agents or any other parties" in connection with the patent proceedings. Thus it appears that the federal officials had in mind fraudulent patents, as well as those erroneously issued; they were speaking from five years' consideration of and experience with the act of 1891, and if it had been their intention that time should not run against such patents until the fraud was discovered, certainly they would have suggested a modification of the statute in that respect. Not only was this not done, but the proceedings in Congress indicate that the statute was construed to cover cases of fraud as well as all other instances wherein United States patents might be attacked.

Two bills were introduced in Congress early in 1896. One thereof provided that suits to vacate patents theretofore issued under a special grant (namely, those grants referred to in the communication of the President and his subordinates) should only be brought within five years from the passage of the act, and suits to vacate and annul patents thereafter issued should not be brought except within *ten* years after the date of the issuance of the patent. An alternative measure, submitted by a minority in Congress, provided for the absolute repeal of the limitation statute. This alternative was subsequently rejected, and the debate revolved largely around the question of the amendment to the original act. This bill was submitted to the House Committee on Public Lands which, through its chairman, Representative Lacey, rendered a report, wherein it is said, *inter alia:*

"These proceedings of necessity caused much disturbance among land titles, and although the purpose involved was the laudable one of protecting the Government by correcting mistakes and *overturning fraudulent patents,* a sense of insecurity and loss of confidence in the integrity of patent titles became a serious drawback to the settlement and improvement of some parts of the country.

In order that all these questions might be speedily adjusted, and that any proposed litigation for the purpose of annulling patent titles should be promptly brought, the limitation act of 1891 was passed, requiring that all such suits as to patents already issued should be commenced within five years, or prior to March 3, 1896, and that as to patents subsequently issued suits to cancel the same should be brought within six years after the date of the patent."

After referring to the message of the President, and the communications of the officials of the Department of the Interior, the report continues:

"While it is important that the rights of the Government should be cared for, and that a reasonable time for adjustment of these patented grants should be given, it is also of the highest importance that the validity of the Government patents should be examined as speedily as practicable so that former settlers and those who wish to become settlers or purchasers of these lands may know that the Government patent issued by the highest authority of the nation shall be evidence of a *final and complete character that the Government's title has been lawfully transferred.*

* * * * * * *

The limitation may perfect titles in some instances founded *in more or less of fraud or mistake.* So it happens with all such statutes, but universal experience has demonstrated the necessity of such statutes."

Congressional Record, Vol. 28, Part 2, p. 1761.

Such committee reports may be looked to by the courts in their consideration of statutes (*Lapina vs. Williams*, 232 U. S., 78, 91). While this court may not, in view of the authority just cited, investigate the debates of the Congress, we take the liberty of quoting briefly some language used in the discussion.

Representative McRae said, in the same volume of the Record, page 1935:

"Mr. Speaker, the hearings before the Committee on Public Lands showed that some of the *most outrageous frauds that were alleged to have been perpetrated* were in connection with these very grants to which the gentleman has referred. (Mexican grants.)

* * *

I have already said I do not believe there should be any statute of limitations against the Government which will prevent the unearthing and exposure of frauds. * * * What the Department wants, and what it ought to have, is the right to correct any errors in these lists if they contain mistakes and to purge them of all frauds."

Mr. McRae was speaking in support of the minority bill, providing for the repeal of the statute, and which was subsequently defeated.

Representative Hepburn said (on p. 1937), in support of an amendment which he introduced, whereby only patents issued *through fraud* should be subject to attack within the *additional* time provided by the proposed act:

"My colleague is in error again in another statement. The proposition I urged as an amendment to this bill does not do that which he says it will do. Whenever a mistake of fact has been made *or fraud perpetrated, actual or constructive*, under my amendment suit may be brought. (Undoubtedly meaning within six years from the date of the patent.) * * * If fraud be found to exist, suits will be brought notwithstanding the adoption of my amendment."

And Mr. Lacey said, in referring to the Hepburn amendment (p. 1938):

"I was trying to answer my friend from Illinois. The amendment amounts to this: That no patent shall be hereafter cancelled or annulled in behalf of the United States by suit *except in cases where actual fraud is shown.*

* * * * * *

We should not pass this bill after putting that sort of an amendment in it which will confirm all these mistakes, *because the number of fraudulent patents is not very great.*"

The bill as introduced was amended by reducing the time within which suits to annul patents thereafter issued might be instituted, from ten years to six years, and as so amended was passed.

Manifestly, therefore, the Congress and those executive officials charged with the duty of observing the requirements of this statute understood at the time of its enactment that, regardless of the illegalities or irregularities, whether arising from fraud or otherwise, attending the securing of the patent, the same could not be challenged after the expiration of the period whose only prescribed commencement was the *date of its issuance.* It is a matter of common knowledge that such was the construction placed upon the act by the executive officers of the government for a period of nearly twenty years and until the present theory was evolved. Such long-continued construction is an important factor for a court's consideration of an ambiguous law, to say nothing of one which is couched in such plain terms as the statute now before us.

U. S. vs. Union Pac. R. R. Co., 148 U. S., 562, 572.

U. S. vs. Cerecedo Hermanos y Compania, 209 U. S., 337.

Bate Refrigerating Co. vs. Sulzberger, 157 U. S., 1, 34.

U. S. vs. Healey, 160 U. S., 136.

II.

The statute means what it, in plain terms, says. Construing it, this court has held that the lapse of six years from "the date of the issuance" of the patent, without suit, takes away the right as well as the remedy; even void patents are thereby forever validated; *a fortiori*, patents merely voidable because of fraud of any character can never thereafter be challenged. The only open question is whether the land was public land of the United States and open to sale and conveyance through the land department at the time the patent issued.

The language of this act of Congress, providing that "suits to vacate and annul patents hereafter issued shall only be brought within six years after date of the issuance of such patents," seems too clear to permit a reasonable contention that it does not mean exactly what is says. There is no room for construction of the statute, and certainly courts cannot legislate into it any exception which its plain terms do not permit.

In *Leffingwell vs. Warren*, 2 Black, 599, the court was considering a Wisconsin statute which provided that—

"Any suit or proceedings for the recovery of lands sold for taxes, except in cases where the taxes have been paid or the lands redeemed as provided by law, *shall be commenced within three years from the time of recording the tax deed of sale*, and not thereafter."

And it said (2 Black, pp. 604-606):

"The only exceptions made in the statute which prevent its application are where the taxes are paid before the sale, and where the land is redeemed within the time prescribed by law after the sale.

This case does not fall within either of these exceptions. *We have no power to add to them. To do so, would be to usurp the function of another and a distinct governmental department. It would be legislation, and not adjudication.* (Citing cases.)

The lapse of the time limited by such statutes *not only bars the remedy,* but *it extinguishes the right, and vests a perfect title in the adverse holder. 'It tolls the entry of the person having the right, and consequently, though the very right be in the defendant,* yet he cannot justify his ejecting the plaintiff.' (Citing cases.)

* * * It (the time) begins to run from the time of the recording of the deed * * *

The equities in behalf of the plaintiff below are strong. We have all felt their force. Without any fault on his part, he has been divested of the title to his land. *But our duty is to apply the law—not to make it.* If this statute be unwise or unjust, the remedial power lies with the Legislature of the State, and not with this court."

The mere statement of the contention of the government that in cases of fraud, particularly concealed fraud, the six years do not begin to run until the date of the discovery of the fraud, demonstrates its fallacy. The only date fixed by the statute for the commencement of the limiting period is the date of the patent, which is a fixed term not capable of elasticity or judicial construction. The court cannot say that the six-year period runs from the date of the discovery of the fraud, because the statute does not authorize that determination; and unless the statute means exactly what it says, it means nothing whatsoever. Suppose that in a given case the six years expire before the discovery of the fraud, how can a court legis-

late to the effect that another period of six years commences upon the date of such discovery?

No such exception, naturally required if Congress intended to create it, was inserted in the act. May a court supply it, upon the theory of public policy or public justice, or to subserve the ends or aims of equity, of for any purpose? This court has answered similar appeals or interrogatories in the negative.

"No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute."

U. S. vs. Goldenberg, 168 U. S., 95, 103.

"This court has nothing to do with the questions of mere policy that may be supposed to underlie the action of Congress. What is termed the policy of the Government in reference to any particular subject of legislation, this court has said, 'is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes.' Hadden vs. The Collector, 5 Wall. 107, 111. Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be the law which Congress has not enacted as such. Here the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress as thus plainly expressed."

Dewey vs. U. S., 178 U. S., 510, 521.

"In our judgment the language used is so plain and unambiguous that a refusal to recognize its natural, obvious meaning would be justly regarded as indicating a purpose to change the law by judicial action based upon some supposed policy of Congress."

Bate Refrigerating Co. vs. Sulzberger, 157 U. S., 1, 36.

"* * * but where the language of the act is explicit, there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. * * * But it is not for the court to say, where the language of the statute is clear, that it should be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

Scott vs. Reid, 10 Peters, 524, 527.

Three decisions of this court, considering this identical statute of limitations, determine the present question in favor of our position:

U. S. vs. Winona R. R. Co., 165 U. S., 463.

U. S. vs. Chandler-Dunbar Co., 209 U. S., 447.

Louisiana vs. Garfield, 211 U. S., 70.

In *United States vs. Winona R. R. Co., supra,* the United States had filed its bill in equity attacking a patent which had been issued for the benefit of the defendant company, upon the ground that the lands had been wrongfully certified and patented, and should be restored to the public domain. The defendant relied upon that clause of the act of March 2, 1896, *supra,* relative to titles of *bona fide* purchasers, and

the court discussed the provision at length. In addition, Mr. Justice Brewer, who wrote the opinion, quoted both acts of 1891 and 1896, construed them and gave them the broadest possible significance. Upon this subject he said (p. 476):

"In other words, it (the government) has recognized that, as against itself in respect to these land transactions, it is right that there should be a statute of limitations; that when its proper officers, acting in the ordinary course of their duties, have conveyed away lands which belonged to the Government, such conveyances should, after the lapse of a prescribed time, be conclusive against the Government, and this notwithstanding any errors, irregularities *or improper action of its officers therein.*

Thus, in the act of 1891, it provided that suits to vacate and annul patents theretofore issued should only be brought within five years, and that as to patents thereafter to be issued such suits should only be brought within six years after the date of issue. Under the benign influence of this statute it would matter not what the mistake or error of the land department was, *what the frauds and misrepresentations of the patentee were,* the patent would become conclusive as a transfer of the title, providing only that the land was public land of the United States and open to sale and conveyance through the land department. The act of 1896 extended the time for the bringing of suits for patents theretofore issued for five years from the passage of that act. It is true that these appellees cannot avail themselves of these limitations because this suit was commenced before the expiration of the time prescribed, and we only refer to them as showing the purpose of Congress to uphold titles arising under certification or patent *by providing that after a certain time the Government, the grantor therein, should not be heard to question them.*"

U. S. vs. Chandler-Dunbar Co., supra, arose in the Circuit Court of the United States for a district in Michigan, and the bill was filed by the United States for the purpose of setting aside a United States patent to certain lands in the St. Mary River issued prior to both acts of 1891 and 1896, it being claimed that such patent was *void*. The defendants relied upon the statute now before us, and the decree of the Circuit Court was in their favor. Upon appeal to the Circuit Court of Appeals, that court, speaking through Judge Severens, Judges Lurton and Richards concurring, said, respecting the question of the statute (152 Fed., 28):

"The first question which we shall consider is whether the defendant *does not have title to this land* by virtue of the statute of limitation of March 3, 1891, c. 559, 26 Stat. 1093 (U. S. Comp. St. 1901, p. 1521), which declares 'that suits by the United States to vacate and annul any patent heretofore issued, shall only be brought within five years from the passage of this act,' and the adverse possession held for that period by the defendant after the passage of the act, if indeed possession is necessary to its operation as a limitation. * * *

The other objection to the application of this statute is that if, as contended, the Chandler patent is absolutely void, the statute cannot apply 'because,' quoting from the brief, 'in legal effect no such patent ever existed. Statutes of limitation may protect a voidable title from any question as to its validity, but no statute of limitations can operate upon a thing that never existed.' This statement of statutory limitations is open to criticism. *But it is sufficient now to say that the statute in question is general and contains in itself no exception.* When it speaks of vacating or annulling patents, of course it means the grants of

title which the patents purport to make, and which the United States had lawful right to make. * * *"

The case was then appealed to this court, wherein Mr. Justice Holmes, delivering its opinion, said (209 U. S., 447, 449):

"There is force in the contention of the United States that the land was reserved and that it had not been surveyed, but we find it unnecessary to state or pass upon the arguments, because we are of opinion that now the patent must be assumed to be good. The statute just referred to provides that 'suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act,' that is to say, from March 31, 1891. *This land, whether reserved or not, was public land of the United States and in kind open to sale and conveyance through the Land Department. United States v. Winona & St. Peter R. R. Co.*, 165 U. S. 463, 476. *The patent had been issued in* 1883 *by the President in due form and in the regular way. Whether or not he had authority to make it, the United States had power to make it or to validate it when made, since the interest of the United States was the only one concerned. We can see no reason for doubting that the statute, which is the voice of the United States, had that effect. It is said that the instrument was void and hence was no patent. But the statute presupposes an instrument that might be declared void. When it refers to 'any patent heretofore issued,' it describes the purport and source of the document, not its legal effect. If the act were confined to valid patents it would be almost or quite without use. Leffingwell v. Warren, 2 Black, 599.*

In form the statute only bars suits to annul the patent. But statutes of limitation, with regard to land, at least, which cannot escape from the jurisdiction, generally are held to affect the right, even if in terms only directed against the remedy. Leffingwell

v. Warren, 2 *Black*, 599, 605; *Sharon v. Tucker*, 144 *U. S.* 533; *Davis v. Mills*, 194 *U. S.* 451, 457. *This statute must be taken to mean that the patent is to be held good and is to have the same effect against the United States that it would have had if it had been valid in the first place. See United States v. Winona & St. Peter R. R. Co.*, 165 U. S. 463, 476."

In *Louisiana vs. Garfield, supra*, this court approved its prior decision in the Chandler-Dunbar case, saying (211 U. S., 77):

"The only doubt is raised by the statute limiting suits by the United States to vacate patents to five years. Act of March 3, 1891, c. 561, Sec. 8, 26 Stat., 1099.

It may be that this act applies to approvals when they are given the effect of patents as well as to patents, which alone are named. In *United States v. Chandler-Dunbar Water Power Co.*, 209 U. S. 447, it was decided that this act applied to patents even if void because of a previous reservation of the land, and it was said that the statute not merely *took away the remedy but validated the patent.*"

It was in the light of these decisions that the District Court for Colorado, in sustaining the demurrer in *U. S. vs. Exploration Company*, read the statute, and pronounced the following views (190 Fed., 407):

"Each of these cases holds that the statute is to be applied not only against the remedy but that it affects the rights of the parties, that on the expiration of the time limited the patent becomes conclusive as a transfer of the title, notwithstanding it may have been voidable; indeed, though it may have been void; nevertheless the statute must be taken to mean that

the patent becomes validated on the expiration of six years after its date and passes the title to the patentee as effectively as though it had been valid in the first instance. *Thus the statute is made an inflexible rule of property;* as much so as statutes which pass title through open, notorious, adverse and continuous possession maintained for a fixed period."

In *U. S. vs. Exploration Company* the Circuit Court of Appeals for the Eighth Circuit summarily disposes of these decisions of this court upon the ground that in none of them was a fraudulent patent attacked. This is true. But in the *Winona* case Mr. Justice Brewer, in considering the meaning and effect of the statute, did refer to patents induced by fraud as being barred. This is a clear indication of this court's construction of the statute, which would be practically nullified if it was not intended to affect patents procured through fraud. In the *Chandler-Dunbar* case, this court invoked the statute as forever validating a patent absolutely void—not merely voidable. It is incomprehensible why a statute which perfects a void patent should not be equally effective in its operation upon those merely voidable. In both cases this court held the statute to establish "an *inflexible* rule of property," and, this being true, it matters not that fraudulent patents were not directly involved.

We assert, with confidence, that this act of Congress is not to be construed as an ordinary statute of limitation, or controlled by rules only applicable thereto, but as a mandatory direction that at the expiration of the six years from the date of the patent it becomes unassailable in any forum. And unless this be true, is there any limitation at all? Suppose a

patent was issued in 1897 through fraud, which was concealed and did not become known to the government until 1906. Could a suit be instituted in this year, 1914, to vacate and annul it? If the opinion of the Court of Appeals in the *Exploration* case be sound, such a suit may be maintained because "the date of the patent" in 1897 is to be forgotten, and the year 1906 is to be substituted because in that year the fraud was discovered; and yet, as that was not the year of the date of the "issuance of the patent," we have no point from which to begin the computation of time.

III.

The principle of Bailey vs. Glover and kindred cases, that where the statute of limitations prescribes a limit after "the cause of action accrues" for the institution of suit, time does not begin to run until the discovery of the fraud, particularly concealed fraud, is based on the theory that until such discovery the cause of action does not accrue. This has been so held by this and the lower federal courts, and is evidenced by statutory enactments. That principle does not apply to a statute such as the one in question, as various national courts have determined.

(1) *The English cases are predicated upon the fact that Statute 21 James I applied solely to actions at law, and therefore the chancery courts might ingraft exceptions in equity cases.*

The first English statute of limitations was enacted in 1623, and is found in 3 Statutes, page 100, 21 James I, Chapter 16 (2 Wood on Limitations [2nd

ed.], p. 963), and it limited the time for the institution of certain *actions at law* therein enumerated to six years "next after the cause of such actions or suit and not after."

That statute only applied, *by its very terms*, to actions at law. Courts of chancery were therefore at liberty to make such exceptions as the circumstances of the case justified.

In the case of *Bond vs. Hopkins*, 1 Sch. & Lef., 413, 428, 431, a suit in equity, Lord Redesdale, in 1802, considered the statute and said:

"The statute of limitations does not apply in terms to proceedings in Courts of Equity; it applies to particular actions at Common Law * * *.

* * * But it is contended that the bar arising from the statute of limitations ought not to be removed, because the enactment of the statute is positive. The answer is, the positive enactment has nothing to do with the case. *The question is not, whether it shall operate in a case provided for by the positive enactment of the statute—but whether it shall operate in a case not provided for by the words of the act, and to which the act can apply only so far as it governs decisions in Courts of Equity;* that is, whether it shall prevent a Court of Equity doing justice according to good conscience, *where the equitable title is not barred by lapse of time, although the legal title is so barred.*"

And the same chancellor, in *Horsenden vs. Lord Annesley*, 2 Sch. & Lef., 607, 630; 9 English Revised Reports, 119, said, in 1805:

"But it is said that courts of equity are not within the statute of limitations. This is true in one respect; they are not within the words of the statutes,

because the words apply to particular legal remedies; but they are within the spirit and meaning of the statutes, and have been always so considered."

In the later case of *Ecclesiastical Commissioners vs. Northeastern Railway Co.*, L. R. Chancery Div., Vol. 4, pp. 845, 859, it was said by Vice-Chancellor Malins:

"Now we all know that before the 3 & 4 Will. 4, c. 27, the *Statute of Limitations was not binding in Courts of Equity*, but as Lord Redesdale expresses it in *Hovenden v. Lord Annesley* (2), where there is no fraud or any particular circumstances, Courts of Equity act not merely by analogy, but in obedience to the statute. Therefore, where there is no fraud, that which would be binding in a Court of Law would be also binding in a Court of Equity, and, consequently, twenty years was a bar to claims in equity, because that period would be a bar at law; * * *. But equity will remove the legal bar proceeding from lapse of time as it would any other legal advantage if sought to be used unconscientiously. That is all the relation this statute has or ought to have on proceedings in equity."

We may, therefore, lay out of view the English cases.

Of course, the statute now before us, *by its terms*, affects suits in equity, because none other than an equity proceeding could be invoked for the purpose of annulling a patent.

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(2) *The "cause of action does not accrue until the discovery of the fraud," is the principle upon which the federal courts predicate their construction of the ordinary sctatute of limitations.*

In *Bailey vs. Glover*, 21 Wall., 342, it was, we concede, established that where a statute prescribed that a suit must be brought within a certain period after the "cause of action accrues," time does not begin, in a case involving fraud, particularly if it be actively concealed, until that fraud is discovered. But, in truth, if *Bailey vs. Glover* is to be considered as welding upon the act any exception whatsoever, it is that in any case of fraud, either anterior or subsequent to the issuance of the patent, either as an inducement or as a concealment, the time, though fixed as beginning with the "date of the issuance of the patent," does not begin until the discovery of that fraud. Thus the court says, after discussing the rule applicable to concealment (21 Wallace, 348):

"We also think that in suits in equity the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party."

Of course, we do not concede that this language, or any other portion of that decision, is operative upon the present statute, but we extract the above from the opinion merely to present to the court the manifest absurdity of applying the rule to a statute which prescribes, without exception, *the day the patent issues* as the initial date in the six-year period. This is true because, if the exception contended for applies not merely to conceal fraud, but also to fraud of which the government remains ignorant, then the stat-

ute is nullified. The date of the patent and the date of the discovery of the fraud are necessarily never identical.

Bailey vs. Glover, and every one of the national and state decisions relied upon by the government, involved statutes prescribing that suits must be brought within a certain time "after the cause of action accrues." It is therefore important that we seek the reason for the rule, in order that these authorities may be differentiated by one argument equally applicable to all. This may effectively be done by limiting ourselves to a few federal decisions wherein the foundation is clearly and unmistakably established, namely, that in such cases the "cause of action" does not accrue, in the contemplation of the law, until the discovery of the fraud. They are, in chronological order:

Sherwood vs. Sutton (1828), 5 Mason, 143.

Carr vs. Hilton (1852), 1 Curtis, 230.

Norris vs. Haggin (C. C. Cal., 1886), 28 Fed., 275.

Kirby vs. Lake Shore etc. Co. (1887), 120 U. S., 130.

Goodridge vs. U. P. Ry. Co. (C. C. Colo., 1888), 35 Fed., 35.

Sherwood vs. Sutton, supra, was decided by Mr. Justice Story, and it has been the government's main reliance. There is nothing in the language used by the distinguished justice which in any wise militates against the view we are presenting. It is true the court held (what we are not called upon to dispute) that where the statute prescribes a limit of time for

the commencement of suits after the "cause of action accrues," in cases of fraud, that time does not begin until the fraud is, or should be, discovered. The reason is not definitely determined in that case, although the doctrine that the cause does not accrue until discovery was in the court's mind when it said:

"I do not stop to inquire, whether it is to be deemed an implied exception out of the words of the statute, or whether the right of action, in a legal sense, does not accrue until the discovery of the fraud. The authorities present some diversity of judgment in this respect. Perhaps the true mode of considering it would be, that it is a continuing fraud during the whole period of its concealment, thus knitting it to the original wrong."

Carr vs. Hilton, supra, rendered twenty-four years after Mr. Justice Story's decision, was an opinion by Mr. Justice Curtis, sitting at circuit; and with his usual lucidity of statement he said:

"The settled statutes of limitation do not run, in cases of fraud while it is secret. Some difference of opinion has existed, respecting the grounds for this rule; but, in my judgment, the most reasonable and sensible ground is, *that, substantially the title to avoid the transaction does not arise until the fraud is known.* This is the practical and just view, and to this I assent; *and hold that when the cause of action is a fraud, the action does not accrue while its cause is concealed;* and this interpretation I must consider to have been within the intention of the legislature, when it used the same language, which had acquired a settled meaning to that effect."

In *Norris vs. Haggin, supra*, Judge Sawyer was considering a California statute of limitations which

provided that in cases of fraud "the cause of action in such case (shall) not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;" and he said (p. 280):

"The English statute of limitations, from which the American statutes were originally derived, applied only to actions at law, and did not embrace this provision; and, in providing for actions for relief on the ground of fraud, *the legislature carried into the provision the doctrine, as established in courts of equity, that the cause of action should not be deemed to have accrued until 'the discovery of the facts constituting the fraud.'*"

Kirby vs. Lake Shore Railroad, supra, was the first opinion of this court wherein the reason for the principle was stated. *Bailey vs. Glover*, and several cases which followed it, applied the rule without expressing its basis. But the *Kirby* case removed all doubt upon the subject. The question arose therein whether the suit came within a certain statute of New York, providing that, in actions for relief on the ground of fraud, the cause of action should not be deemed to have accrued until the discovery of the fraud. The court held, or assumed, that the action at bar was not of the character covered by this statute, but, nothwithstanding such fact, the general principle of courts of equity accorded with the statute, and extended itself to the suit under consideration. In so holding, Mr. Justice Harlan said (120 U. S., 138):

"It is an inflexible rule in those courts (namely, those of the United States), when applying the general limitation prescribed in cases like this, *to regard the cause of action as having accrued at the time the fraud was or should have been discovered*, and thus

withhold from the defendant the benefit, in the computation of time, of the period during which he concealed the fraud."

In *Goodridge vs. Union Pacific Ry., supra,* Judge, later Mr. Justice, Brewer, in the Circuit Court for Colorado, said:

"It is further insisted that, where there is concealment of a wrong, that the time during which such concealment runs is not to be included within the statutes. *The cause of action dates from the time the wrong is discovered.*"

We have no intention of compiling the many state authorities to the same effect. But among the cases cited in the footnote of *Bailey vs. Glover,* in the official edition and apparently a part of the opinion, is *First Mass. Turnpike Corporation vs. Field,* 3 Mass., 201, wherein, on page 207, Chief Justice Parsons said:

"The delay of bringing suit is owing to the fraud of the defendant, and the cause of action against him *ought not to be considered as having accrued, until the plaintiff could obtain the knowledge that he had a cause of action.*"

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(3) *The same principle is fortified by many statutes, which, adopting it, have provided that in the case of fraud "the cause of action shall not be deemed to have accrued until the discovery thereof."*

Thus, an act of Parliament in 1833 provided:

"And be it further enacted, That in every case of a concealed Fraud the Right of any Person to bring a Suit in Equity for the Recovery of any Land or Rent

of which he, or any person through whom he claims, may have been deprived by such Fraud, *shall be deemed to have first accrued* at and not before the Time at which such Fraud shall or with reasonable Diligence might have been first known or discovered."

Statutes 3 & 4 William IV, Chap. 27, sec. 26, XIII Statutes, Part I, p. 75.

2 Wood on Limitations (2nd ed.), Appendix, p. 972.

This was the statute referred to by Vice-Chancellor Malins in *Ecclesiastical Commissioners vs. North Eastern Ry. Co.* L. R., 4 Ch. Div., 845, 859, above quoted, and wherein he says that prior to its enactment acts of limitation were not binding in courts of equity.

In the appendix to 2 Wood on Limitations, second edition, beginning on page 749, will be found the various statutes of limitations then (in 1893) existing in the several states. An examination thereof discloses that at least the following states had legislated that in cases of fraud (in some cases, concealed fraud only) the "cause of action *does not accrue until its discovery*":

Alabama (p. 751); California (p. 759); Connecticut (p. 770); Iowa (p. 794); Maryland (p. 820); Minnesota (p. 833); Mississippi (p. 838); Missouri (p. 843); Montana (p. 848); Nebraska (p. 851); Nevada (p. 855); New York (p. 873); North Carolina (p. 882); North Dakota (p. 888); Ohio (p. 892); South Carolina (p. 909); Washington (p. 931); Wisconsin (p. 939); Oklahoma (p. 952); and Utah (p. 956).

In the *Exploration* case the Court of Appeals referred to these statutory provisions in support of its views. But we submit it failed to observe that the language found in these acts necessarily differentiated them from the statute now under consideration.

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(4) *The principle does not apply to a statute such as the one in question, as various national courts have determined.*

There are but few statutes considered by the courts and similar in terms to the acts of 1891 and 1896. But whenever such statutes have been involved, it has been held that the doctrine applicable to the ordinary provisions may not be invoked where time runs from a specific date.

In re Brown, 19 N. B. R., 312; 4 Fed. Cas. No. 1983, p. 338.

Pickett vs. McGavick, 14 N. B. R., 236; 19 Fed. Cas. No. 11,126, p. 588.

Matter of Herzig, 15 Abb. New Cases, p. 179.

Mall & Co. vs. Ullrich (C. C. Ohio, 1888), 37 Fed., 653.

These cases present in particularly clear juxtaposition the two classes of statutes and the manifestly different principles applicable to them, and as they were all decided after *Bailey vs. Glover* and distinguish that authority, we take the liberty of presenting them at considerable length.

Like *Bailey vs. Glover*, they involved the National Bankruptcy Law, then operative; but, unlike that case, they were called upon to construe another limiting section of that act.

The section considered in *Bailey vs. Glover* is found in 14 Statutes, page 518, section 2, and reads:

"* * * But no suit at law or in equity shall in any case be maintainable by or against such assignee, or by or against any person claiming an adverse interest, touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years *from the time the cause of action accrued* for or against such assignee."

Section 34 of the same act (14 Stat., p. 533) contained the following provision:

"That any creditor or creditors of said bankrupt, whose debt was proved or provable against the estate in bankruptcy, who shall see fit to contest the validity of said discharge on the ground that it was fraudulently obtained, may, *at any time within two years after the date thereof*, apply to the court which granted it to set aside and annul the same."

These two sections, 2 and 34, were subsequently embraced, in substantially the same language, in sections 5057 and 5120, respectively, of the Revised Statutes.

Bailey vs. Glover was decided at the October term, 1874. Thereafter the last-quoted section 34 was presented for consideration to the courts above mentioned, and their construction thereof was in the light of that case, which was put forward, at the bar, as controlling authority to the effect that where

concealment of the fraud attendant upon the discharge of the bankrupt was shown, the statute, notwithstanding its positive terms, would not run. All the courts held otherwise, and their opinions have never been overruled.

Pickett vs. McGavick, supra, decided in 1876, was the first of these cases, the decision being by District Judge Parker in the Western District of Arkansas. We quote from the opinion:

"If the provisions of section 2 of the bankrupt law could be made to apply to this case, then the rule would apply as laid down by the supreme court, in Bailey v. Glover, 21 Wall. (88 U. S.) 342, 'that the bar does not commence to run, in cases where the action is intended to obtain redress against fraud concealed by the party, or which, from its very nature, remains secret, until the fraud is discovered.' But the question presents itself, does this section apply to this case? * * * Then we are called on to ascertain the true construction of the 34th section of the bankrupt act. The court has no hesitation in saying, if it be true, as alleged in the petition, that the defendant was guilty of the act charged against him, that it presents a most flagrant and outrageous case of fraud, and one which this court will, if it can, aid in uncovering. *But, bad as this case may be, we must treat it legally, and if a remedy is wanting under the law, it is not with the court (which does not make laws, but construes and administers those already made), but with the law-making power.* Section 34 of the bankrupt law provides that any creditor of the bankrupt may, at any time within two years after the date of the discharge, apply to the court to set aside and annul the same, on the ground that it was fraudulently obtained.

When does the cause of action first accrue in a case under this section? From the date of the discharge, or from the discovery of the fraud? Under the

ordinary statutes of limitations, which provide that suit shall be brought in a specified time after the cause of action accrues, it has become a fixed rule, that, where an action is based on fraud, the statute does not commence to run until the discovery of the fraud, or until it has become known to the party injured by the fraud. *Because it can well be said that a cause of action does not accrue until the party could avail himself of a remedy to enforce that cause of action, and he could not do so until the cause of action was discovered or became known to him. But this section is different from the ordinary statute of limitations. This language is entirely different. It positively provides that the discharge may be contested at any time within two years after the date thereof, on the ground that it was fraudulently obtained.* That time (the date) must, then, in my judgment, be taken as the time when the cause of action accrues."

In re Brown, supra, was decided by the District Court for the Southern District of New York in 1879, and the opinion by District Judge Choate was as follows:

"It is insisted that this (section 34) is to be construed like a statute of limitation, as being subject to the implied exception or condition that in case the cause of action is fraudulently concealed, *the time of the accruing thereof shall be deemed to be the time of the discovery of the right to sue.* It has been held that the two years' limitation from the time of the accruing of the cause of action, in case of suits by and against assignees in bankruptcy, is to be so construed. Bailey v. Glover, 21 Wall. (88 U. S.), 342; Nicholas v. Murray (Case No. 10,223). In the case last cited it is intimated by Judge Deady that the same rule of construction would, he was inclined to think, be applied to this section. He did not, however, determine this question. In Pickett v. McGavick, Judge Parker held that the

limitation of two years was absolute, and not to be avoided by showing a fraudulent concealment of the grounds on which it was sought to annul the discharge. *It appears to me that the language used, 'two years after the date thereof,' is not capable of that enlargement by construction that has been found possible in statutes of limitation generally.*

The words used are positive and explicit. They differ from the words usually defining a limitation of suits, and I think they were designedly used to fix an absolute period of time when the question of the validity of the discharge would be set at rest, and when the debtor and those again trading with him might safely treat his discharge from his old debts as final."

Matter of Herzig, supra, involving the same section 34, was decided in 1885, by the United States District Court for the Southern District of New York. In the opinion District Judge Brown said (15 Abb. N. C. 179):

"*In my judgment, the time specified is a limitation upon the authority of the court; and such an application cannot be entertained after two years has expired.* The language of Section 5057 is not analogous. That section authorizes an action to be brought 'within two years from the time when the cause of action accrued.'

Under this section in cases of concealed fraud, it is held that the cause of action does not accrue until the discovery of the fraud or reasonable means of knowledge of it (Bailey v. Glovers, 21 Wall. 342; Rosenthal v. Walker, 111 U. S. 185, 190). *Section 5120, however, is so different in its language as not to admit of any enlargement by similar latitude of construction.* The rights of other persons in a business community, through subsequent transactions of a bankrupt, are moreover, so directly and largely involved, that the general policy of the bankrupt act

forbids any such construction, even if it were possible under the language of section 5120. After two years from the discharge, the bankrupt is not only free to enter into new business engagements with a new set of creditors, but the latter have a right to rely on the protection against old claims which the bankrupt's discharge purports to afford, and the complete bar to further litigation on the question of his discharge which the security of new business requires. *If the discharge may be avoided after two years, on the ground that the fraud was not discovered, then there is no fixed period whatever after which any new business or new credits could be entered upon with safety.*"

In *Alexander H. Mall & Co. vs. Ullrich, supra*, the District Court for Ohio said (37 Fed. 653):

"Section 5120 of the Revised Statutes (bankrupt law) provided an absolute bar, where the petition was not filed within two years from the date of the discharge. The limitation is not in any way controlled by the discovery of the fraud; and the limitation provided by law in actions by or against assignees in bankruptcy founded upon frauds, and providing that the limitation begins to run from the discovering of the fraud does not apply in this class of proceedings. The demurrer is therefore sustained, and petition dismissed, with costs."

The very recent decision of this court in *Kinder vs. Scharff*, 231 U. S., 517, lends, we believe, increased importance to the bankruptcy decisions just quoted. That was a suit brought by a trustee in bankruptcy to recover land alleged to have been fraudulently conveyed by the bankrupt. The defendant pleaded that the action was barred under section 11d of the present bankruptcy act (30 Stat., 544, 549), which provides

that "suits shall not be brought by or against a trustee of a bankrupt estate subsequent *to two years after the estate has been closed.*"

The case turned on another point, and therefore the question now raised was not directly passed upon. However, Mr. Justice Holmes, who delivered the opinion, used some language, relative to this statute, which indicates that such a law as we are now considering cannot be construed as in *Bailey vs. Glover.* He says (231 U. S., 520-521):

"But it is obvious that there must be some limits if the promise of repose after two years in Sec. 11d is not to be a mirage. * * * Therefore, *apart from the difference between the statutes considered there and here,* cases like *Bailey v. Glover,* 21 Wall. 342, and *Traer v. Clews,* 115 U. S. 528, where the cause of action for fraud was concealed, do not apply. * * *

The judge had no power by an *ex parte* order reopening the estate to remove the bar that was completed, and that there was no ground for removing. *Whether it be put on the construction of the Bankruptcy act* or on the ground that the estate was fully administered *quoad hoc,* or of laches on the part of the trustee, it comes to the same thing."

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(5) *The Congress was presumptively aware of the rulings that the "cause of action" does not accrue until the discovery of the fraud; and, in selecting another and inflexible date from which to measure the period of limitation, intended to depart from this principle.*

The *Glover* case was decided in 1874. *Kirby vs. Lake Shore Railroad*, which held that the "cause of action" did not "accrue" until the discovery of the fraud, was decided in 1887. All of the other federal decisions to which we have referred antedated the passage of the act of 1891. Congress is presumed to have known of these decisions, and the principles upon which they were founded. If it had intended to impress the same rule upon the present statute, it would have continued the phraseology of the acts previously construed; or, if not, it would have inserted express legislative direction to the same effect. It did neither, but adopted language incapable of any elasticity of construction.

"When the purpose of a prior law is continued usually its words are; *and an omission of the words implied an omission of the purpose.*"

Pirie vs. Chicago T. &. T. Co., 182 U. S., 438, 448.

The legislative history of the act discloses, as it seems to us, the fact that, in passing this act, Congress appreciated that it would specifically limit the time for bringing actions to a certain date calculated from another certain date, and that this would preclude actions after a definite time, no matter whether fraud or its concealment were involved or not. Congress had in mind the fact that the settlement of a new country depended upon the definiteness in time as a basis for the assertion of adverse claims to lands to which it had parted title. It knew that the doctrine *nullum tempus occurrit regi* was absolutely inconsistent with such settlement, and it knew that anything

short of specific limitations meant the possible clouding of land titles and consequent embarrassment to settlement. The mere rule, as expressed in *Bailey vs. Glover*, as to invoking statutes of limitations in order to prevent fraudulent assertions of original title by a *plaintiff* at a time when the defendant could not show that such original rights never existed in the plaintiff, was not enough; for Congress knew that there never would be any difficulty on the part of the government in showing its original titles.

The question before Congress was whether it should adopt such a statute of limitations as would leave the government grants subject to indefinite repudiation, or whether it should say that after a specific time those grants, and the subsequent development of the country based upon them, should be unassailable. If it adopted the first theory, the grantees and their purchasers might be compelled to preserve the evidence of the good faith of the entries indefinitely, in order to rebut any suggestions of fraud which the government might at any time conclude it had discovered. If it adopted the second theory, the government was given a specific number of years to interview the entrymen and to examine into all the details of the entries, so as to determine whether it desired to bring suit. The concealment of an original fraud was not, and is not, a cause of action in itself. The right of the government to recover would turn in any event upon the original fraud; and Congress knew that, with the records of the entry before it, the government, if it desired, could, in reasonable probability, within six years seek out the entrymen and ascertain the facts, so as to determine whether it would bring suit. What, then, did Congress do?

It enacted a statute which, instead of providing that suits should be brought within a certain time from the discovery of fraud, or within a certain time from the accrual of the cause of action, specifically determined, as a matter of mathematical accuracy, and based upon an exact starting-point within the government's knowledge, the exact date beyond which no suits should be brought. As to patents issued after the act, Congress could not specify in advance, by specific recital of a day, month, and year, the final date beyond which no suit could be instituted, because each patent would have its own date of issuance. It therefore declared that suit should only be brought within six years from the date of the issuance of the patent. If Congress had said that in the case of a patent issued January 1, 1901, no suit could be brought after January 1, 1907, could there be any doubt as to the exclusive nature of this declaration? What doubt, then, can exist when Congress makes the equivalent declaration by providing that in case of "patents hereafter issued (suit) shall only be brought within six years after the date of the issuance of the patent"? The declaration was identical, and the language exclusive, or it means nothing. It is, we think, impossible to say that, when a patent issues January 1, 1901, and Congress has declared that a suit to vacate it shall only be brought within six years from its issuance, suit can, nevertheless, be brought at a date later than six years from January 1, 1901. If the courts declare that such a suit can be brought at a later date, what limitation is there at all?

If a statute declares that a suit shall be brought only within a certain time after "the cause of action

accrues," it is possible for a court to determine, on equitable principles, when that time arrives; for Congress has made no declaration as to when the cause of action accrues, and this question is obviously a legal one. Having so determined, the court can then find a specific limitation period expressly declared by the statute as running from the time found to be the date of the accrual of the cause of action. This is done without varying, overruling, or departing from any language in the statute, and the period of limitation remains as expressly declared by the statute itself. But where a definite date is fixed by the statute, beyond which a suit shall not be brought at a later time, what right or authority can be found in the statute for imposing any limitation period running from a date other than that fixed by the statute; and what closing date can be found in the statute other than the one definitely fixed by the statute itself?

After all is said, it is the statute and not the court that must determine what shall fix the beginning and what shall fix the end of the period of limitation. If the statute provides that the time shall run from the accrual of the cause, the court has no authority other than to determine that time. When so determined, the court cannot vary from it. Likewise, if the statute fixes a date determinable by a specific fact, the court cannot vary from that date. Whether the statute provides that the time shall run for six years from the accrual of the action, or for six years from a specific date fixed by an indisputable fact, the court cannot pass either of those dates of termination.

If, under the statute at bar, the court should determine the day from which the limitation period runs

as being the day of the discovery of the alleged fraud, where would the court go to find the end of that limitation period? The statute fixes it as six years from the issuance of the patent. This is an absolute limitation of time and cannot be controlled by any extrinsic circumstances. If the court should say that the period should run for six years from the discovery of the fraud, the court, we submit, would be legislating, not only in fixing a new date of beginning, but also in passing beyond the specific date of termination set by the statute. Suppose a patent should issue January 1, 1901. The statute says that no suit shall be brought after January 1, 1907. If the court should say that, despite the statute, the period of limitation begins to run January 1, 1903, when an alleged fraud was discovered, it would still be true, under the statutory mandate, that no suit could be brought after January 1, 1907.

The statutes under which the equitable rule as to the discovery of fraud is invoked are statutes which, on such invocation, permit the computation of time from the discovery, according to the terms of the statute itself. Such statutes do not fix a definite date as the beginning, or a definite date as the termination, of the period. If a court could say that the fixing of a definite date for the beginning of the period causes no embarrassment, it would still remain true that none of the statutes mentioned fix definite dates as the termination of the period. This seems to us to be vital in considering the statute at bar. The other statutes mentioned are all statutes under which, without changing a word of the statutory language, the period of limitations can still be calculated according

to the strict language of the statute itself, after determining the point of beginning. Such statutes fix a date of beginning, which is to be made certain in each case by judicial determination as to when the cause of action accrues; and they fix dates of termination of the limitation period, which are mere matters of time calculated from the date of beginning *thus* ascertained. The statute at bar, however, fixes a definite date of beginning, based on a fact within the knowledge and control of the government, and not subject to change according to a determination of any other question. It also fixes a definite date at which the period shall end, and it does this regardless of any collateral questions. If, therefore, a court can say that the period of limitation under the statute at bar begins with the discovery of the fraud, it can find no authority for saying that the period shall run for six, ten, or any other number of years after that discovery. The statute itself compels the court to say that, whatever the beginning of the limitation period, the end of that period shall be a date measured by calculating six years from the date of the issuance of the patents.

Where the equitable rule as to the discovery of fraud has been applied, it is not with the effect of defeating the language of the statute. It is an attempt to ascertain the time when the statute begins to run, and thereupon to enforce the terms of the statute according to its language. Where, however, the beginning and the end of the statutory period are definitely fixed by Congress, there is no room for judicial ascertainment or for the adoption of any equitable rule. The moment a court attempts to extend the limitation period by calculating six years in such a way as to

pass beyond the time of termination definitely fixed by the statute, it might as well adopt any other number of years passing beyond that time, for the act fixes no period save the one specifically mentioned. That the statute at bar is not an ordinary limitation statute is made clear by the fact that Congress fixed specific dates as the end of the period of limitations, applicable to patents issued before the statute, and to those issued after the statute, so that any man inspecting a patent could say definitely what the final date of possible attack might be.

IV.

The provision in the statute relative to patents issued before the passage of the act makes it impossible in such instances to apply the argument that a statute of limitations may run in certain cases from the discovery of the fraud. The same construction must be given to the entire statute.

There is another important matter to be referred to in this connection. The act in question applies not only to patents issued after the passage of the act, but also to those issued *before* that time. As to those issued prior to the passage of the act, the act provides: "That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this Act." It will be noted that in these cases Congress took the position that it was immaterial when the patents issued or when the cause of action accrued. The act was passed March 3, 1891. Patents of various

ages were outstanding, and Congress did not attempt to fix a period of limitations in those cases running from the dates of the issuance of patents. Upon the contrary, it arbitrarily enacted that as to all such patents, whether one, two, or twenty years old, and no matter what the nature of the cause of action, no suits should be brought after March 3, 1896. It did not even allow six years from the passage of the act. Now, clearly, this was a positive declaration by Congress that, regardless of any questions of fraud or otherwise, the government had to bring its suits before March 3, 1896. Suppose that in 1910 the government had brought a suit to annul a patent issued in 1888, and had charged that it had just discovered certain concealment of fraud. Would it not be said at once that the bar of the statute was complete? There could be no doubt as to the date of the passage of the act, and none as to the date of the five-year expiration. If the court should find that the fraud was discovered in 1906 or in 1910, it would still be bound by the statutory command that no suit should be brought after March 3, 1896.

If a court in such a case were to say that the suit could be brought after March 3, 1896, where would it find any such authority? If it said that the cause of action accrued upon the discovery of the fraud, or that the bar of the statute did not run until the fraud was discovered, what could it say as to when the limitation period would expire, and as to the "proper time" to bring the action after discovery? If it said that Congress could not be presumed to have abrogated the equity rule, the answer would be that, if such rule were ever applicable to statutes generally,

it had clearly been abrogated by this one. If it said that the suit could be brought within five years from the discovery of the fraud, and this five-year period passed beyond March 3, 1896, it would be flatly in conflict with the specific termination period fixed by the statute itself. In other words, we think that there could be no argument to sustain such an action brought after March 3, 1896; and if the courts insisted that such an action could be brought, there would be no limitation whatever, and the statute would simply be repealed by the courts.

The specific intent of Congress to fix definite periods of limitation, not to be controlled by anything save the language of the statute itself, and not to be affected by any question of fraud, is made clear by an examination of the provisions relative to patents issued before the statute as connected with the provisions relative to patents issued after the statute. If Congress had intended that suit should be brought within a certain time after the discovery of a fraud, it could readily have put all cases on exactly the same basis as to the extent of the limitation period. Upon the contrary, it determined to fix specific dates which should conclude the whole matter. For that reason it provided that, as to patents issued prior to the passage of the statute, the period of limitatons should end five years after the passage of the statute, and this time of termination became conclusive as to all classes of such patents, and could be availed of by the government *even though the government had for many years prior to the passage of the statute, known of fraud attaching to the patent itself.* The time of the discovery of fraud in any patent of that class is ob-

viously of no importance, and is necessarily excluded by the statute itself. The knowledge by the government in this regard could not be invoked by a patentee as against the specific period granted the government to bring its suit. Conversely, as to patents issued after the passage of the act, no question of fraud is important as against the specific limitation of the statute itself. In one class of cases, Congress has said that five years from the passage of the act shall be allowed to the government, regardless of any question as to when the government may have discovered the fraud. In the other class of cases, Congress has said with equal clearness and with like absence of conditions, that six years shall be the conclusive measure of time.

The entire statute treats all classes from the same point of view, and establishes definite terminations for the limitation periods: With this in mind, and with the premise that the intention of Congress as to frauds must be considered the same regardless of the particular patent, we are brought clearly to the position that the same policy was intended to be applicable to all cases. Congress cannot be held to have had the intention of saying that the policy requiring the government to sue within a definite time meant that, if fraud and its concealment attached to a patent issued March 4, 1891, the government should be able to defeat the express language of the statute by asserting the equitable rule invoked by the appellee; but that, if it attached to a patent issued March 2, 1891, the government should not have that right. There cannot be two rules under the same statute. Statutes of limitation are not statutes of presumption, but

they are statutes of repose, and the application of the theory of repose cannot be made more certain than by a congressional declaration that the limitation period shall end at a calendar time which can be calculated in advance as a matter of mere mathematics.

V.

Some discussion of the decision of the Court of Appeals in United States vs. Exploration Co., Ltd., 203 Fed., 387.

The government will doubtless rely largely upon this opinion. For that reason, and because of the writers' connection with that case, some comment thereon is natural. In what precedes we have collected the authorities and the reasoning bearing upon the questions involved, and, in their light, we may confine the present discussion to a very limited space.

Generally speaking, we think the Court of Appeals overlooked the reason for the construction which this court, in *Bailey vs. Glover* and others, placed upon the ordinary statute of limitations which prescribed a period running from the date "when the cause of action accrues." By judicial decision, as well as by express and numerous statutory provisions, the cause of action is not deemed to acrue until the discovery of the fraud. It would be an idle repetition again to point out that no such construction may be applied, judicially, to a statute fixing the initial point as the "date of the issuance of the patent." But the court says (203 Fed., 390-391):

"It must be admitted that whether a period of limitation commences to run from a fixed date, or whether it commences to run from the accrual of the cause of action, affects in no way the reason upon which the rule is based."

And then the court proceeds to consider what *would* have been the construction if the act had prescribed the period as commencing when "the cause of action" accrued. But this statute may not be construed by following a principle which might have been applied if the Congress had employed different language. The equitable principle to which the distinguished court alluded has not been engrafted as an *exception*, even upon statutes providing for the commencement of suits within a period "after the accrual of the cause of action," but, as heretofore shown, the rule has been applied to such laws merely because the cause of action is not deemed to accrue until the discovery of the fraud. In other words, the courts, including this court, have *defined* and not *created exceptions*, which are not permitted through judicial legislation.

The essence of the views of the Court of Appeals may be found in the following excerpt from its opinion (203 Fed., 391):

"We should hesitate to impute to the law-making power such an intention for many reasons: First, there is nothing in the language of the statute which evidences any such intention; second, it would impute to Congress a desire to deprive the United States, in cases of concealed fraud, of a remedy to cancel patents obtained by fraud; third, it would make of a statute enacted to prevent fraud a formidable instrument for the making of fraud successful; fourth, there is no

reason why the equitable rule in regard to concealed fraud should not be applied where the statute of limitations fixes a date certain, as well as where the statute provides that the limitation period shall run from the accrual of the cause of action; fifth, it would render it possible for one who had defrauded the United States of land to prevent an inquiry in regard to the same by the commission of additional fraud; sixth, it would permit one to set off one fraud against another; seventh, it would allow one to take advantage of one's own wrong, which is not to be thought of in a court of equity. The truth is that the rule in regard to concealed fraud is so instinct with justice and common sense that it has been adopted by statute in the following states: Alabama, California, Connecticut, Iowa, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, South Carolina, Washington, Wisconsin, Oklahoma and Utah."

We have already alluded to the error in which the court fell in referring to the statutes of various states which, it says, have adopted the rule relied upon. These statutes expressly provide that *the cause of action does not accrue until discovery of the alleged fraud.*

But, we submit, the fundamental defect of the court's language is this: that it seeks to inject something into the law, by way of exception, which cannot be found therein. To the court's statement that nothing in the congressional language evidences an intention to abrogate a rule of equity (be it definition or exception), we answer that the language "shall *only* be brought" states a condition as exclusive as though Congress had declared that fraud should have no effect upon the enforcement of the statute. In fact,

the word "only" makes the matter so exclusive that it eliminates not only all questions of fraud, but all other questions. It is difficult to think of any language that might have been employed which would make the act stronger or broader in its exclusive character. In addition, there was no reason for Congress expressing itself on the matter of fraud; for if, by the nature of the act itself, the so-called equity rule could not have been applied without doing violence to the act, the matter was at an end. This condition Congress confirmed *ex vi termini;* for when it fixed a definite calendar date at which a statutory period should terminate, it necessarily precluded the application of any rule which would fix a new date beyond the one arbitrarily adopted by Congress itself. The laying aside of former statutory language to which the equitable definition had been applied, and the substitution of other language incapable of any such definition, imports a purpose in Congress to define in words so clear as to avoid all controversy (*Piric vs. Chicago T. & T. Co.*, 182 U. S., 438, 448). Let us suppose that during the course of the debate a member had suggested an amendment to the effect "that the time herein prescribed shall not be tolled by ignorance of the government respecting any fraud inducing the issuance of the patent." Would it not at once have been suggested that such a provision was superfluous, in view of the lucid and mandatory provisions already employed? And if it were still said that a court might impress upon the act the equitable principle in question, would not the answer have been that, as Congress was departing from the ordinary language of statutes of limitation which had permitted the oper-

ation of the rule, and used terms not susceptible to similar construction, the principle could not be engrafted by the judicial department?

All the suggestions of the Court of Appeals, from the standpoint of justice or *ab inconvenienti*, may be disposed of by the mere statement, so often employed by this court, that they should have been addressed to the legislative branch of the government.

But there are other considerations, involving the matter of discovery of fraud, that go to the policy that Congress expressed when it passed the act in its present form, and declined to consider arguments made for the purpose of excluding cases of fraud. The argument of protecting the government was made on one side, and that of fixing a definite time beyond which no patent should be assailed was made on the other. The latter view prevailed. It is true that in certain cases the statute may conclude the right of the government even as against frauds, if within the long period of limitations the government has not discovered such fraud. It is likewise true, however, that in more cases it has given stability to the development of the country, and certainty to the government's patents. The act expresses a general policy which Congress thought best to adopt under all the circumstances. If this policy had not been adopted, every purchaser of land patented from the government more than six years would still be held to careful scrutiny as to whether he knew, or ought to have known, of fraud or of its concealment, and his titles would be in peril of assault upon the suspicion of any government agent.

Viewing the matter in all its aspects, not only from the government's standpoint, but from the standpoint of its citizens, Congress may well have had other considerations in mind. Who is "the United States," when it comes to the question of acquiring knowledge of a fraud? Can it be said that one agent or officer may know of it, but that the government does not know? Is it the local land officer, the commissioner of the General Land Office, the special agents, or the Secretary of the Interior; or must it appear that the President himself has knowledge, before the government can be said to have discovered a fraud? The application of the rule of discovery is comparatively simple between individuals, but as against the government it is almost hopeless. Under such circumstances, is it not only natural that Congress should fix a definite time, and say that the government should not go beyond that time? Otherwise it is clear that public-land states will be harassed by this character of litigation for many years to come; for, on the theory of the Court of Appeals, there is substantially no time limit, and it may well follow that alleged "discoveries" will be made at the convenience of the various agents of the Department of the Interior for generations to come. Entrymen die, and the owner of property received from them may lose the benefit of their testimony; but one untruthful entryman may, for his own purposes, devise a story, to be urged after the statutory date of limitation, and which an honest owner of property may then find himself without sufficient proofs to refute.

In viewing this legislation of the Congress, it must be considered in all its possibilities, and the

clear and uncertain language employed by it must necessarily have been intended to require the conclusion reached by this court and expressed by Mr. Justice Brewer in the *Winona* case:

"Under the benign influence of this statute it would matter not what the mistake or error of the land department was, *what the frauds and misrepresentations of the patentee were*, the patent would become *conclusive* as a transfer of the title, providing only that the land was public land of the United States and open to sale and conveyance through the land department."

JOEL F. VAILE,

HENRY MCALLISTER, JR.

INDEX.

	Page.
Statement	1
Action taken by the lower courts	7
Two lower courts have concurred in the findings of fact	9
General history of the entries	10
Testimony of entrymen	18
Investigation after patent	22
The facts constituting the original fraud	23
(a) Applications and final proofs	23
(b) The connection of Kribs and Smith with the fraud	33
The entries were in violation of the timber and stone act	42
1. The timber and stone act forbids the making of any entry by one for another, the making of any entry in pursuance of a speculative purpose, and the obtaining of more than 160 acres by any one person or association. These three prohibitions, though dictated by one and the same general policy, are independent and distinct	42
The text and policy of the act discussed	42
2. The evidence proves conclusively that both the letter and the spirit of the statute were ruthlessly disobeyed	46
(a) The purpose and result of the conspiracy involve a complete frustration of the statutory safeguards	46
(b) The unlawful beginning and the unlawful end of the process are not purged of their illegality by any independent purpose attributable to the entrymen in this case	46
(c) The condition against prior agreement was violated	48

The entries were in violation of the timber and stone act—Continued. Page.

(d) If there were no prior agreements, the condition against excessive entry was violated 50

(e) If (c) and (d) are incorrect, the entries were speculative 51

(f) Further as to the element of speculation. *United States* v. *Budd* and the legislative history of the act considered 52

(g) Other cases cited by appellants 58

Smith was not a bona fide purchaser 60

1. Where the defense of bona fide purchase for value without notice is set up, the burden of proof is upon the defendant 60

2. Kribs had actual notice, and notice to Kribs was notice to Smith 61

3. Smith was not a "bona fide purchaser" within the meaning of the timber and stone act 65

The Linn & Lane Timber Company is not a bona fide purchaser 71

Statute of limitations 88

I. The general rule, accepted and applied by this court in *Bailey* v. *Glover*, 21 Wall. 342, and in subsequent decisions, declares that a statute of limitations, however sweeping and positive its terms, shall not be held to run against a cause of action concealed by fraud, or arising out of a fraud which conceals itself, until the fraud has been, or at least until in the exercise of reasonable diligence it should have been, discovered by the party affected 90

II. The rule does not depend upon the interpretation of particular terms employed by the legislature. It affords a conspicuous exemplification of the principle of construction which withdraws from the letter that which is plainly not within the spirit of a statute. *Holy Trinity Church* v. *United States*, 143 U. S. 457 101

III. This general rule is applicable to the statute of limitations pleaded by the defense in this case ..... Page. 108

1. The reasons underlying the rule apply to a suit to annul a patent for fraud. This is established by the decision of this court in *United States* v. *Minor*, 114 U. S. 233 108

2. The statute forms an exception to the general rule that time does not run against the Government. Therefore (and for the reasons upon which that immunity rests) it should not be strictly construed against the Government 109

IV. Response to various suggestions made in the opposing briefs 111

1. Answer to the objection that the rule disobeys the terms of the statute 111

(a) This argument is but a repetition of the argument made in *Bailey* v. *Glover*, and which must have been made in every case in which the rule was invoked and disputed. It begs the question entirely 111

(b) In the absence of any extraneous reason to the contrary, the overwhelming presumption is that Congress intended the general words to be construed and restained in accordance with the universal rule 112

(c) If Congress had not so intended, it would have forestalled the possible application of the rule by definite words 113

2. Answer to the objections based upon the circumstance that the statute employs the expression "after the date of the issuance of such patents," instead of the expression "from the time the cause of action accrued" 114

IV. Response to various suggestions made in the opposing briefs—Continued. Page.

(a) The basis of the doctrine, as we have shown above, is wholly independent of particular terms. It is too deep and fundamental a conception to spring from a frivolous distortortion of the term "accrue." It is a tribute of the courts of equity to the legislative mind and to the idea of conscience, upon which equity is founded. 114

(b) In *Bailey* v. *Glover*, *supra*, the words "accrue" and "accrued" are not once mentioned in the opinion, except where the statute is recited..... 114

(c) There is no distinction in the application of this principle between statutes which, on their face, run from the "accrual of the cause of action" and those which run from some specified event to occur or a specified date; particularly is this true of the statute at bar..... 115

(d) These two expressions mean precisely the same thing..... 116

(e) The expression "accrual of the cause of action" is commonly used in statutes of this character merely because it is a convenient generic expression of the general legislative purpose to start the time in each case when the right to sue arises.. 117

IV. Response to various suggestions made in the opposing briefs—Continued. Page.

(f) Congress used the words "after the issuance of such patents" because it was dealing with a species of cases, and the generic description "accrual of the cause of action" was unnecessary 118

(g) The rule has been applied to statutes prescribing periods to run from specific events 118

(h) The statute of 21 James I, to which the exception was so often applied, does not use the word "accrue" or any derivative thereof 120

3. Reference to certain authorities cited in opposing briefs 121

4. Answer to the insistent argument that the statute must be enforced literally to insure the stability of titles and protect innocent purchasers 125

(a) The argument applies to conveyances by individuals as well as to conveyances by the Government. It goes to the abolition of the rule in all cases, rather than in this particular class of cases, and thus contradicts the unanimous opinion of all courts of equity since the first statute of limitations was enacted 125

(b) Honest titles are amply protected by the extreme difficulty of overcoming patents and by the perfect defense of bona fide purchase, recognized by the courts 125

IV. Response to various suggestions made in the opposing briefs—Continued. Page

(c) The argument, in effect, invites this court to question the good faith of the executive branch of the Government and to doubt the capacity of the judiciary and Congress to correct abuses if they occur.... 125

5. There is nothing in the legislative history of this act, or in that of the act of Mar. 3, 1896 (29 Stat. 42), which conflicts in any degree with our position here.... 126

6. Response to the suggestion that the benefits of the rule must be denied the United States because of the technical difficulty of defining the manner in which the Government may be affected by notice.... 128

7. Regarding the provision in the act of 1891 relating to patents theretofore issued.... 128

8. Some concluding observations concerning the statute.... 129

The conclusion of the Secretary of the Interior that the patents should be issued is not a bar to this suit.... 129

Conclusion.... 130

CITATIONS.

Page.

Adams v. *Church*, 193 U. S. 510 59
Alden v. *Gregory*, 2 Eden, *280 ..... 100, 104
Amy v. *Watertown* (*No. 2*), 130 U. S. 325 ..... 96, 123
Amy v. *Watertown*, 22 Fed. 418 123
Bailey v. *Glover*, 21 Wall. 342 90
Bartles v. *Gibson*, 17 Fed. 293 96
Blake v. *Chambers*, 4 Nebr. 90 98
Boone v. *Chiles*, 10 Pet. 177 60
Booth v. *Warrington*, 4 Brown's Par. Cas. 163 100
Braun v. *Sauerwein*, 10 Wall. 218 ..... 96, 102
Brainerd v. *Buck*, 184 U. S. 99 9
Bree v. *Holbech*, Douglas, 656 100
Brown, In re, 4 Fed. Cas. 1983 ..... 121, 122
Cal. Con. Min. Co. v. *Manley*, 81 Pac. 50 83
Carr v. *Hilton*, 1 Curt. 390 96
Chemical Nat. Bank v. *Kissane*, 32 Fed. 429 124
Church of the Holy Trinity v. *United States*, 143 U. S. 457 ..... 101, 112
Cook v. *Sherman*, 20 Fed. 167 ..... 89, 96
Cotterell v. *Purchase*, Forrester, 61 ..... 100, 104
Currey v. *Allen*, 34 Cal. 254 98
Deake, appellant, 80 Me. 50 98
Distilled Spirits, The, 11 Wall. 356 63
Donnelly v. *Donnelly*, 8 B. Mon. 113 98
Duff v. *First Nat. Bank*, 13 Fed. 65 96
Douglas v. *Elkins*, 28 N. H. 26 98
Dun v. *Lumbermen's Credit Ass'n*, 209 U. S. 20 9
Edwards v. *Gibbs*, 39 Miss. 166 98
Engel v. *Fischer*, 102 N. Y. 400 124
Farrar v. *Bernheim*, 75 Fed. 136 96
Fee v. *Brown*, 162 U. S. 602 68
First Nat. Bank v. *Trebein Co.*, 59 Ohio St. 316 83
First Mass. Turnpike v. *Field*, 3 Mass. 201 106
Garvin v. *Garvin*, 40 S. C. 435 98
Gifford v. *Helms*, 98 U. S. 248 95

	Page.
Gilson v. *United States*, 234 U. S. 380	10
Granger v. *George*, 5 B. & C. 149	100, 116
Greenman v. *Greenman*, 107 Ill. 404	98
Hafeman v. *Gross*, 199 U. S. 342	58
Hanger v. *Abbott*, 6 Wall. 532	96
Haywood v. *Marsh*, 6 Yerg. 69	98
Herzig, Matter of, 15 Abb. New Cas. 179	121
Hoffman Coal Co. v. *Cumberland Coal Co.*, 16 Md. 456	83
Hovenden v. *Annesley*, 2 Sch. & Lefr. 607	100
Hughes v. *United States*, 4 Wall. 323	130
Huron, &c., v. *Kittleson*, 4 S. D. 520	83
Jackson v. *Jackson*, 149 Ind. 238	89
Johnson v. *Drew*, 171 U. S. 193	130
Johnson v. *Smith*, 2 Burr. 962	83
Johnston v. *Roe*, 1 Fed. 692	96
Kirby v. *Lake Shore R. Co.*, 120 U. S. 130	95
Lake Shore, &c., Ry. Co. v. *Prentice*, 147 U. S. 101	86
Lant v. *Manley*, 75 Fed. 627	96
Lea v. *Iron Belt Co.*, 147 Ala. 421	83
Leffingwell v. *Warren*, 2 Black, 599	119
Lewis v. *Lindley*, 19 Mont. 443	60
Lewis v. *Welch*, 47 Minn. 193	98
Lincoln v. *Judd*, 49 N. J. Eq. 387	98
Longworth v. *Hunt*, 11 Ohio St. 194	98
Louisiana v. *Garfield*, 211 U. S. 70	124
McAlpine v. *Hedges*, 21 Fed. 689	82, 87
McCaskill Co. v. *United States*, 216 U. S. 504	82
McDonald v. *McGuire*, 8 Tex. 361	98
McKneely v. *Terry*, 61 Ark. 527	98
Mall v. *Ullrich*, 37 Fed. 653	121
Meader v. *Norton*, 11 Wall. 442	96
Mitchell v. *Thompson*, 1 McLean, 96	96
Moffat v. *United States*, 112 U. S. 24	130
Moore v. *Green*, 19 How. 69	96
Moore v. *Robbins*, 96 U. S. 530	130
National Conduit Mfg. Co. v. *Conn. Paper Mfg. Co.*, 73 Fed. 491	83
Nickerson v. *Meacham*, 14 Fed. 881	60
Peck v. *Bank of America*, 16 R. I. 710	98
Pickett v. *McGavick*, 19 Fed. Cas. 11126	121, 122

	Page.
Prestwood v. *McGowan*, 148 Ala. 475	60
Prevost v. *Gratz*, 6 Wheat. 481	104
Prickett v. *Muck*, 74 Wis. 207	60
Quimby v. *Blackey*, 63 N. H. 77	89
Raymond v. *Flavel*, 27 Oreg. 248	60
Rieger, In re, 157 Fed. 609	83
Rosental v. *Walker*, 111 U. S. 185	88, 95
Sears v. *Shafer*, 6 N. Y. 268	98
Shappirio v. *Goldberg*, 192 U. S. 233	9
Sherwood v. *Sutton*, 5 Mason, 143	96, 104, 107, 108
Sillyman v. *King*, 36 Iowa 207	60
Simmons Creek Coal Co. v. *Doran*, 142 U. S. 417	86
Smith v. *Orton*, 18 How. 263	60
Snodgrass v. *Br. Bank of Decatur*, 25 Ala. 161	98, 99
South-Sea Co. v. *Wymondsell*, 3 Wms. Ch. 143	100
Sparks v. *Farmers' Bank*, 3 Del. Ch. 275	98
State v. *Standard Oil Co.*, 49 Ohio St. 137	83
Stebbins v. *Patterson*, 108 Mich. 537	98
Stocks v. *Van Leonard*, 8 Ga. 511	98
Texas Pac. Ry. v. *Louisiana R. R. Com'n*, 232 U. S. 338	9
Towson v. *Moore*, 173 U. S. 17	9
Tyler v. *Angevine*, Fed. Cas. 14306	96
United States v. *American Smelting & Ref. Co.*, 203 Fed. 393	97
United States v. *Atherton*, 102 U. S. 372	130
United States v. *Beebe*, 127 U. S. 338	111
United States v. *Biggs*, 211 U. S. 507	60
United States v. *Brannan*, 217 Fed. 849	60
United States v. *Budd*, 144 U. S. 154	52
United States v. *Chandler-Dunbar Co.*, 209 U. S. 447	124
United States v. *Clark*, 200 U. S. 601	70
United States v. *Detroit Timber & Lumber Co.*, 200 U. S. 322	47, 69
United States v. *Exploration Co.*, 203 Fed. 387	97, 115, 123
United States v. *Hill*, 217 Fed. 841	60
United States v. *Hughes*, 11 How. 552	130
United States v. *Insley*, 130 U. S. 263	111
United States v. *Keitel*, 211 U. S. 370	45
United States v. *Lee Wilson & Co.*, 214 Fed. 630	83

Page.

United States v. *Maillard*, 4 Ben. 459 124
United States v. *Milwaukee Transit Co.*, 142 Fed. 247 .. 83
United States v. *Minor*, 114 U. S. 233 ..... 108, 111
United States v. *N. C. & St. L. R. Co.*, 118 U. S. 120 . 110
United States v. *Schurz*, 102 U. S. 378 117
United States v. *Southern Pacific R. Co.*, 184 U. S. 49 . 67
United States v. *Sullenberger*, 211 U. S. 522 60
United States v. *Trinidad Coal Co.*, 137 U. S. 160 45
United States v. *Winona, etc., R. Co.*, 165 U. S. 463 . 66, 124
Upton v. *McLaughlin*, 105 U. S. 640 95
Washington & Georgetown R. Co. v. *Hickey*, 166 U. S. 521 60
Washington Securities Co. v. *United States*, 234 U. S. 76 10
Wear v. *Skinner*, 46 Md. 257 98
Wickham v. *Sprague*, 18 Wash. 466 98
Williamson v. *United States*, 207 U. S. 425 51
Wiswall v. *Campbell*, 93 U. S. 347 95
Wood v. *Bailey*, 21 Wall. 640 95
Wood v. *Carpenter*, 101 U. S. 135 89
Woodward et al., 42 L. D. 440 53
Cong. Rec., vol. 4 ..... 54, 57
Cong. Rec., vol. 28, pt. 2 126

STATUTES.

Act of March 2, 1867 (14 Stat. 518) 91
Act of June 3, 1878 (20 Stat. 89) 1, 43
Act of June 14, 1878 (20 Stat. 113) 39
Act of March 3, 1887 (24 Stat. 556) 66, 67
Act of March 3, 1891 (29 Stat. 1099) 9, 128
Act of February 12, 1896 (29 Stat. 6) 67
Act of March 2, 1896 (29 Stat. 42) 66, 67
Act of March 3, 1896 (29 Stat. 42) 126

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE LINN & LANE TIMBER COMPANY AND Charles A. Smith, appellants, *v.* THE UNITED STATES. } No. 46.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

[This case is to be argued here with No. 159. The two were tried and decided together in both courts below.

Opinion of Circuit Court covering both cases: R. 1399; ~~[illegible]~~. 181 Fed. 545.

Opinion of Circuit Court of Appeals in both cases: R. 1450; ~~[illegible]~~. 196 Fed. 593

No. 46 was No. 3320 in the Circuit Court and No. 1973 in the Court of Appeals.

No. 159 was No. 3319 in the Circuit Court and No. 1972 in the Court of Appeals.]

The act of June 3, 1878 (20 Stat., 89), known as the timber and stone act, provides (sec. 1) that surveyed public timber lands may be sold to citizens of the United States, or persons who have declared their intention to become such, in quantities not exceeding one hundred and sixty acres to any one person or association of persons at the minimum price of two dollars and fifty cents per acre.

Section 2 of the act is as follows:

> That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivisions the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for ditch or canal purposes, where any such do exist, save such as were made by or belonged to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this act; *that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself;* which statement must be verified by the oath of the applicant before the register or the receiver of the land office within the district where the land is situated; and if any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands,

and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.

The material part of section 3 reads:

That upon the filing of said statement, as provided in the second section of this act, the register of the land office shall post a notice of such application, embracing a description of the land by legal subdivisions, in his office, for a period of sixty days, and shall furnish the applicant a copy of the same for publication, at the expense of such applicant, in a newspaper published nearest the location of the premises, for a like period of time; and after the expiration of said sixty days, if no adverse claim shall have been filed, the person desiring to purchase shall furnish to the register of the land office satisfactory evidence, first, that said notice of the application prepared by the register as aforesaid was duly published in a newspaper as herein required; secondly, that the land is of the character contemplated in this act, unoccupied and without improvements other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper, or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and the receiver, as provided for in case of mining claims in the twelfth section of the act approved May tenth, eighteen hundred and

seventy-two, the applicant may be permitted to enter said tract and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon:

This suit was commenced in the Circuit Court on May 25, 1908, to cancel twenty-eight patents, all issued August 12, 1902, to as many quarter sections of land, and a series of subsequent conveyances, which ultimately vested the title in the Linn & Lane Timber Company.

The bill (R., 5) charges the consummation of a conspiracy on the part of S. A. D. Puter, C. A. Smith, Nils O. Werner, John A. Willd. Robert T. Greacen, Hubert E. Rogers, Frederick A. Kribs, and ~~other~~ other persons unknown, to defraud the United States of the land in suit by securing persons to make entries under the timber and stone act for the use and benefit of Smith, or some of the other conspirators, upon an agreement to pay such persons for the use of their names and all expenses involved in the transactions. It is alleged that in each instance the entrymen conveyed to John A. Willd, and that for the purpose of preventing the complainant from recovering the lands deeds were fraudulently executed among the defendants as follows: John A. Willd and wife to Robert F. Greacen, November 2, 1900; Robert F. Greacen to Hubert E. Rogers, February 11, 1901; Hubert E. Rogers and wife to Nils O. Werner, December 21, 1904; and that all of these deeds were taken without consideration and with full notice of the fraud and for the use and benefit of Smith.

It is further alleged that the complainant had no knowledge of the facts constituting the fraud until a long time after the issuance of the patents and shortly prior to the institution of suit, and that it had no means or opportunity of discovering the fraud sooner and could not have done so by the exercise of reasonable diligence.

On September 5, 1908 (R., 36), all of the defendants except Werner and Smith filed a plea averring that all right, title, and interest in and to the lands in suit had passed to the Linn & Lane Timber Company and that it was a necessary party. On October 8, 1908 (R., 42), Werner and Smith filed a similar plea.

On November 16, 1908, an amended bill (R., 49) was filed, making the Linn & Lane Timber Company a party. This amended bill, in addition to the allegations of the original bill, alleges that further to defraud and deceive the complainant and to prevent recovery, Smith, on May 24, 1906, incorporated the Linn & Lane Timber Company under the laws of Minnesota, all of the stock of which is owned by Smith, for the purpose of taking title to the lands in suit; that on *September 9, 1908*, Smith caused to be filed for record with the recorder of conveyances of Linn County, Oregon, a deed purporting to be executed by Werner and wife on August 8, 1907, and a deed purporting to have been executed by Smith and wife on June 4, 1906, each conveying to the company the said lands. It is further alleged that these deeds were made to the company without consideration

and with full knowledge of the fraud perpetrated on complainant.

It is further alleged that complainant had no notice of said deeds until the time they were offered for record and that the existence of the same was concealed from complainant until such recordation; that complainant had no means of discovering the existence of said deeds until they were so recorded; that complainant made inquiry of all persons who would be likely to possess any information regarding the title to said land, and caused diligent search to be made of the public records, and that up to the time of the filing of the original bill, such search and inquiry did not reveal any right, title, or interest in or to any of said lands in the company; that complainant was kept in ignorance of any and all pretended rights of the company in or to any of the said lands until the filing of the plea in abatement on September 5, 1908.

On ~~June~~ *Jan.* 29, 1909, the joint and several answer of Werner, Smith, and Kribs was filed. (R., 82.) It denies the conspiracy and avers that none of the entrymen made any agreement to sell his or her land to Smith prior to filing the application. It further avers that Kribs purchased the lands from the entrymen, after filings were made, for the use and benefit of Smith, and that for such service he was paid at the rate of 27½ cents per acre; that the title was taken by Willd because if it became generally known in that locality that Smith was purchasing lands, it would tend to advance prices; that neither Kribs, Smith, nor Willd had any knowledge or notice of any con-

spiracy, frauds, or irregularities involved in the entries. It is admitted by the answer, however, that Kribs advanced all the money necessary to obtain the land from the Government, including all incidental expenses, and that he took mortgages on the entries as security.

The answer further avers that for the lands conveyed to the company Smith received as a consideration the entire capital stock of $100,000, and that the company had no knowledge of the fraud. It is further averred that if complainant ever had any cause of action, it had full knowledge of all matters constituting such cause of action prior to March 1, 1905.

The answer of the company was filed January 29, 1909. It avers that the suit is barred against the company by reason of the statute of limitations of March 3, 1891. In all other respects the answer is the same as the answer of Werner, Smith, and Kribs.

Action Taken by the Lower Courts.

On September 12, 1910, the trial court filed its opinion (R., 1399; ~~196~~ 181 Fed., ~~599~~ 545), finding that the lands in this suit, and those in suit 3319 as well, were entered fraudulently, substantially as charged in the bills. The court further held that Smith was not a bona fide purchaser in that Kribs was clearly shown to have been his agent; that Kribs had full knowledge of the fraud; and that Smith furnished all the money for the scheme. The opinion states that it may be true that Smith himself had no actual

knowledge of the fraud, although the evidence on that point would be more satisfactory if Smith and Kribs had not destroyed all correspondence between them relating to the acquisition of the lands.

It was next found that the Land Department investigated these entries prior to the issuance of patents, but that the patents were ultimately issued upon fraudulent affidavits by the parties in interest; that a special agent of the Land Department was bribed by Kribs to induce the entrymen to make false affidavits; and that the Government was not precluded by such investigation from bringing this suit.

It was further found that the suit was not barred as to the Linn & Lane Timber Company by the statute of limitations of March 3, 1891 (26 Stat. 1093), since the suit was commenced against Smith within the statutory period, and the company having been organized by Smith merely to hold the lands as his *alter ego*, was in no better position than he. (In the other case, which is No. 159 in this court, involving 17 patents, the court held that 8 had been issued more than six years prior to service of process on Smith and that they were therefore barred by the act, thus overruling complainant's contention that the statute was tolled until the discovery of the fraud.)

As to the stock which had been sold and pledged by Smith, the court held that the corporation, not its stockholders, was the holder of the legal title and that the corporation was not a purchaser in good faith. The decree grants all of the relief prayed in the bill. (R., 136.)

Appeal was taken by the company and Smith to the Circuit Court of Appeals, and there the decree of the trial court was affirmed. The court below rests its decree upon the same grounds as did the trial court, but in addition to finding that Smith and his company were identical in interest it held, contrary to the trial court, that the amended bill making the company a party was seasonably filed, because that was done within six years *from the time of the discovery of the fraud*, thus holding the statute of limitations of March 3, 1891, subject to the usual rule of computation of time in cases of fraud.

Two Lower Courts Have Concurred in the Findings of Fact.

The trial court found as facts that none of the entrymen entered the land for his own use and benefit, but for that of Smith; that Kribs was Smith's agent and that he not only had notice of the facts surrounding the entries, but actually participated in the fraud; that Smith and the company were identical in interest, in that Smith owns practically all of its capital stock, and that he organized the company to hold the lands and so to encumber the title as to make recovery difficult, if not impossible. These facts are all that is necessary to support the decree, and as the findings are concurred in by two lower courts, it is submitted that they should not be disturbed here unless shown to be clearly erroneous. *Texas Pacific Railway* v. *Louisiana R. R. Commission*, 232 U. S., 338; *Dun* v. *Lumbermen's Credit Association*, 209 U. S., 20; *Towson* v. *Moore*, 173 U. S., 17; *Brainard* v. *Buck*, 184 U. S., 99; *Shappirio*

v. *Goldberg*, 192 U. S., 232; *Washington Securities Co.* v. *United States*, 234 U. S., 76; *Gilson* v. *United States*, 234 U. S., 380.

General History of the Entries.

It was stipulated that any evidence applicable may be used in either case (R., 987).

The record discloses a scheme whereby one person, Charles A. Smith, acquired an enormous and highly valuable tract of land through shameful violations of the timber and stone act. The amount involved in this case is 5,480 acres, represented by 28 entries, and that involved in case No. 159 is 1,720 acres, represented by 17 entries, the total aggregating 7,200 acres, approximately.

The method pursued was to procure persons who were entitled to file under the act to make the entries upon the promise to each of them that all expenses of filing, publication, traveling, final proofs, and the Government price would be borne by the promoter, and that the entryman would receive $75 or $100 for a deed to the tract selected. After final proofs were made, each entryman made a mortgage to Kribs for $600, which the defendants claim was to cover the expenses above enumerated, and at the same time (in some cases a short time after) each entryman made a deed of his tract to Willd and received the stipulated sum, which in no case was over $100.

The active participants in the fraud were Horace G. McKinley, Stephen A. D. Puter, both of whom were dealers in timberlands (R., 658, 657, respec-

tively); and Frederick A. Kribs, who was the agent of Charles A. Smith (R., 574, 1009–1010); and Daniel W. Tarpley, another timber dealer (R., 378). John A. Willd took the title from the entrymen and passed it along through Graecen, Rogers, and Werner to the company for the benefit of Smith. Willd is a brother of Smith, according to the latter's testimony, but the discrepancy in names is not explained. (R., 1372.)

McKinley and Puter learned through William R. Mealey, who lived at Sweet Home, Oreg., that near that place there was a heavily timbered tract of land (R., 388, 410). McKinley and Puter, assisted by Tarpley, procured 57 persons to file on this land at the Roseburg, Oreg., land office (R., 242–247). Among the filers were Puter and his wife. The filings were made in January and February, 1900, and final proofs were made in April and May of the same year.

The land was subject to entry by scrip and the Northern Pacific Railroad Company initiated a contest against the said 57 entries, claiming them to have been fraudulently made for the use and benefit of Smith, and this contest resulted in a compromise between the railroad company and Smith, through Puter and Kribs, whereby 24 of the entrymen relinquished their entries and the company withdrew the contest as to the remainder. Under the terms of the compromise, Smith was to purchase the relinquished lands from the company when patents should issue (R., 668). Of the remaining 33 entries, 28 are involved in this suit.

While strict chronological order will be violated, it is believed that a preliminary review of an investigation made by the Interior Department, as the result of the Northern Pacific contest, will better enable the court to grasp the true situation. Particularly is this so because the statute of limitations is urged as a defense and in its consideration it becomes important to ascertain the time when the fraud was discovered. It may therefore facilitate the work of the court to present the facts in the order in which they became known to the Government:

The Northern Pacific Railroad Company, through its Washington counsel, reported to the Commissioner of the General Land Office on February 26, 1900, that the company had been advised that these filings were fraudulent and requested an investigation. (R., 1110–1111.)

On February 24, 1900, Special Agent Mathers, of the General Land Office, reported to the department that the land department of the Northern Pacific Railroad Company had informed him that the entries were procured by McKinley in the interest of Puter. (R., 806.)

On November 26, 1900, the Commissioner addressed a letter to E. D. Stratford, special agent, who was stationed at Roseburg, Oreg., directing him to make a thorough investigation of 23 of the entries. (R., 806.) On December 24, 1900, Stratford wrote the Commissioner (R., 809) recommending that 29 entries, other than those mentioned in the letter of the Commissioner, be held up until

they could be investigated, as the same parties were interested in them and they were surrounded by the same suspicious circumstances.

In the meantime, however, and probably as a result of the letter of Mathers to the Commissioner of February 24, 1900, Special Agent Loomis, assigned to a neighboring district, was detailed, owing to Stratford's absence from the Roseburg district, to attend the hearing of final proofs and to cross-examine the entrymen. (R., 614.) The testimony of Loomis (R., 613 et seq.) shows that the recollection of this witness as to what occurred is not at all clear; but he did remember that he needed money at that time and had made mention of this fact to several persons, among whom was Kribs; that later in the evening Kribs came to him and offered to lend him $75, which he accepted. (R., 618.) He could not remember how or when he returned the money, but has a faint recollection of leaving it with the proprietor of the hotel for Kribs. He could not, however, swear that he did (R., 619).

Loomis further testified that while Stratford was making his investigation Kribs met him (Loomis) and told him that Mrs. Jacobs and her daughter, both of whom made filings, refused to give affidavits unless paid for them. He asked Loomis, "as a friend of his and as a friend of these two women," to get their affidavits (R., 620). Kribs gave him a check for $150, telling him he was willing to pay for the affidavits and "that any that there was over I might have myself" (R., 621). And further, "Now, as

near as I can remember, I did not give them all of that $150, but a portion of it remained with me as my pay for doing the work. But if I did give them the whole $150, he certainly gave me some more, for I know I got some pay for doing that work." Loomis wrote the affidavits and the women signed (R., 622). The work was not in his district and he did not consider that he was acting as a special agent (R., 621, 622). He testified that the affidavits of these two women which were transmitted to the department were not those which were taken before him (R., 623). The affidavits which he took "were simply something to fasten them down until something else could be done." (R., 629.)

On March 9, 1901, Stratford made his report to the Commissioner (R., 812), in which he states that he was unable to find any evidence connecting McKinley or Puter with these entries, except that they received from each of the entrymen a location fee; that is, he was unable to find any tangible evidence of fraud, and recommended that the entries be sustained and passed to patent.

On March 9, 1901, Stratford made another report to the Commissioner (R., 818) as to the entries the suspension of which he had recommended on December 7, 1900, stating that he had been unable to find any tangible evidence of fraud, and recommended that the entries be passed to patent.

On April 15, 1901, the Commissioner again wrote Stratford (R., 822), stating that the report of Mathers showed that McKinley had induced the entrymen

to make the applications, promising to pay all their expenses and, after entry was made, either to buy the land himself or to find a purchaser, and that the entrymen would make $40 or $50 each—perhaps more—from the transaction. The letter recited the fact that McKinley had been arrested for fraud in connection with the matter, and that the evidence showed that the entries had been made for speculative purposes. The Commissioner further stated that he was not willing to pass the entries to patent as matters then stood. He criticized the investigation and report of Stratford for lack of thoroughness and directed a reinvestigation.

On December 28, 1901, Stratford wrote the Commissioner (R., 827), asking for a transfer to some district east of the Rocky Mountains, assigning as a reason that the investigation of the entries embarrassed him because many of the entrymen were personal friends and neighbors.

On February 10, 1902, the Commissioner wrote Stratford (R., 830) instructing him to complete his reports on all of the cases which he had examined, and that when such reports were received the advisability of assigning him to other duty would be considered.

During the time Stratford was making his investigation he received several sums of money from Kribs (R., 1031). Puter testified (R., 677) that after the entries had gone to patent and he was having a settlement with Smith, the latter handed him an account which showed many expenditures on account of the

transaction and it showed that certain sums went to Stratford and Loomis. Kribs testified that Stratford received sums from him, but that they were by way of loan (R., 1031, 1033). He also admits (R., 1031) that he purchased 40 acres of land from Stratford for $400; that lands of the same character were selling cheaper (R., 1032), but that "to be candid about it, if I bought it from him or any little favors, why, I might not lose anything by it" (R., 1031). The testimony of Kribs shows that these loans were never liquidated (R., 1106). Irvin Rittenhouse was stenographer for William J. Burns. Burns, it will be seen, afterwards investigated this fraud. Rittenhouse testified that Kribs admitted in an affidavit made before Burns that he paid Stratford $10 an acre for land worth only $6 per acre and that he paid Stratford sums of money during Stratford's investigation, aggregating $900 (R., 897–898).

After receiving the letter of February 10, 1902, Stratford took some additional affidavits (R., 1132–1136, 1141–1143, 1145–1148, 1167–1170), and thereupon made a report to the Commissioner, which is United States Exhibit No. 53 (R., 1176), stating "that there are many circumstances connected with these entries which bear the taint of fraud"; and further: "I am frank to say that I have some reason to believe that every one of these entries were and are fraudulent, but I am just as frank to say that I do not believe I can prove it." He again recommends that the entries be passed to patent.

On March 28, 1902, the Secretary of the Interior directed the General Land Office (R., 831) to transmit to him the reports of special agents bearing on the entries.

A. R. Green, a special inspector for the Interior Department, made a general report to the Secretary on March 10, 1902, as to public-land conditions in Oregon (R., 918–923). His report touches these entries but slightly. He made no investigation or recommendation.

On May 17, 1902, the Secretary of the Interior wrote to the Commissioner of the General Land Office (R., 832), reviewing the investigations at length. He stated that it was evident from the reports of Stratford that a hearing in the cases under consideration would not disclose sufficient evidence of fraud to warrant the cancellation of the entries, and directed the Commissioner to issue patents.

The affidavits taken by Stratford are strikingly similar in form and substance. The answers to the questions are categorical and to the effect that in taking up the lands the entrymen made no contract or agreement, express or implied, before final proof, to sell or convey the land, or any part of it, or any of the timber thereon; that they borrowed $600 from Kribs to pay the expenses of taking up the land, and that they gave him a mortgage to cover the loan; that they sold the land to Willd for $800 (in some instances $850); and that they paid McKin-

ley or Puter a location fee of $100. (R., 1119–1175.) As to the manner in which these so-called affidavits were taken, let the witnesses speak:

Testimony of entrymen.

Luella Ingersoll, née Beeman, heard there was a Government agent coming and they were liable to have some trouble. When McKinley told her the agent would interview her she became frightened. He told her there was no need for fear, "because he is our man." She asked McKinley what he meant, and he replied, "Why, we have him fixed. He is our man." (R., 177, 178.) He further told her, "I will come with them and I will sit where you can see me, and when you are to say 'yes' I will nod my head, and when you are to say 'no' I will shake my head." Afterwards McKinley, Kribs, and Stratford came to her house and took her statement; that she answered the questions "yes" or "no" as McKinley instructed her. Kribs started to go, but returned for a drink of water. She gave it to him, and he returned the glass with a ten-dollar gold piece in it, and left immediately. (R., 179, 180.) McKinley told her to say that she sold her land to Willd for $850, but she testifies that she received only $100. (R., 184.) He further told her to say that she had no prior agreement. (R., 185.)

The testimony of Henry Blakely shows that his affidavit was taken in Brownsville, at a hotel, with six others, whose names he does not give. At the trial he was asked as to certain material answers

given in his affidavit, and he testified that such questions were not asked him. (R., 354, 355.) Regarding his answer that he had mortgaged the land to Kribs, he admitted on the stand that he did not know that he had made a mortgage. He further admitted he did not know exactly what he got for his land, but that it was nothing near $800, as his affidavit showed. (R., 356.) He repudiated several other material questions in the affidavits which involve Kribs and Puter, on the ground that he knew neither of them at that time. (R., 358.)

Jay S. Phillips, on the stand, repudiated material statements in his affidavit, saying that "it was not read that way to me." (R., 461.) While the affidavit shows that he borrowed $600 from Kribs, and that the money was given to him personally by Kribs in cash, he testified that he never received any money from Kribs or anyone else by way of loan. He did not state, as the affidavit recites, that he had sold the land to Willd for $850 (R., 462), nor did he say that out of the $850 he had paid off the mortgage of $600. (R., 462.) He did not say to Stratford anything regarding the length of time he owned the land, where the purchase price of the land was paid to him, nor his reasons for selling. (R., 462, 463.)

Puter, who was a witness for the Government, testified that Stratford came to him with an affidavit for him to sign. "It was at the time that we were procuring the affidavits from all the entrymen, and this was one covering the entire tract—what knowledge I had of it." (R., 673.) He did not prepare the

affidavit himself and does not know who did (R., 673); in a few particulars the affidavit was designed to represent the truth, but in many instances it was not (R., 674). He was asked:

> Q. What arrangements did you make with McKinley or Kribs as to what should be the substance of the affidavits?
>
> A. Well, McKinley felt just as I did—that we ought to do just as much as we could to help the matter out and round those fellows up, and get their affidavits, and talk to them, and insist that they should make certain affidavits showing that everything was straight. (R., 675.)

Harry Saltmarsh testified that about a year after he proved up McKinley requested him to go to the Revere House at Albany, informing him that Kribs wanted to see him to make an affidavit before a special agent. Kribs assisted him by nods of his head in answering the questions. (R., 440–441.)

Saltmarsh repudiated the material statements of the affidavit, and his case may be considered typical. While his affidavit states that he borrowed $600 from Kribs to make his entry and received the money from him personally; that he subsequently sold the land to Willd for $900 in cash; that he thereupon paid to Kribs, at Albany, the $600 mortgage money; and that he never made any agreement, express or implied, for the sale of the land prior to final proof—he testified on the stand that he never received any money except the $75 paid him when the deed was made and $5 or $10 from Kribs for signing the

affidavit; that he never had any transaction with Kribs except at the time of making the affidavit; that when he signed the affidavit he did not know whether he had deeded to Kribs or to Willd. (R., 441–447.) The statement made in the affidavit that the deed to Willd was made a month after final proof is false. Final proof was made April 18, 1900, and the deed April 24, 1900. (See appendix.)

Thomas R. Wilson testifies that some months after the entries were made McKinley took him to a room in the Imperial Hotel at Portland and introduced him to a man who, he said, was a special agent of the Land Department and who handed him a document already prepared and requested him to sign it, explaining that "it had to do with the conditions of the claim out there and improvements and so on." The special agent said: "You can just sign your name here," and he signed without the document being read to him. (R., 255, 256.) Immediately upon leaving the room he met Tarpley and Kribs. (R., 256, 257.)

Basil H. Wagner testified that before Stratford saw him, McKinley and Kribs talked to him about making a deposition; that Stratford answered the questions in the affidavit as to whom he had made the mortgage and deed. Kribs was present. (R., 297.) When he had made his affidavit Kribs gave him $5, telling him to buy a hat. (R., 299.) He admitted that some of the questions were answered by Kribs. (R., 302.)

It is scarcely open to doubt that Stratford was in the employ of the conspirators and that he merely went through the form of an investigation. When the department insisted that there was fraud in the entries and persisted in further investigation, he evidently became frightened and asked to be relieved of the work and assigned to other duty.

Investigation after patent.

The foregoing events all transpired before the issuance of patents, which was August 12, 1902. In January, 1905, Francis J. Heney, assisted by William J. Burns, who at that time was a special agent of the General Land Office, ~~were~~ was making an investigation of land frauds in Oregon. Puter, who in the meantime had quarreled with Smith about their accounts, informed Heney and Burns that the entries were fraudulent. (R., 689.) The entrymen were subpœnaed to appear before the grand jury. They went to Portland under subpœna, and while there were interviewed by Burns. Burns took their affidavits, two of which appear in the record. (R., 1213, 1215.) These affidavits are in sharp conflict with those taken before Stratford. In both instances the affidavits are in accord with the testimony given by the same parties on the witness stand and are to the effect that they were told by McKinley, or some one for him, that if they filed on the land there would be $75 in it for them and all their expenses, and that after making final proof they made mortgages to Kribs, and that at the same time, or a few days later, they made deeds to Willd and received $75 and their expenses.

Heney and Burns became convinced that the entries were fraudulent. McKinley was arrested, charged with subornation of perjury, but was discharged. The Government, it may be assumed, then began a thorough investigation, which resulted in the filing of this suit on May 25, 1908.

THE FACTS CONSTITUTING THE ORIGINAL FRAUD.

(a) Applications and final proofs.

The filings were all made in January and February, 1900, the last on February 26. Puter had known McKinley since 1891 or 1892, and had worked with him in timberland deals. (R., 658.) Puter testified that in January, 1900, McKinley told him of this good timberland in Linn County and wanted to know if they could enter into some scheme to procure title. They talked the matter over for a week or 10 days. (R., 660.) Quoting from his testimony:

> And we concluded that at the present value of the land, that we could afford to pay the entrymen $100 each for their right, we to pay the Government whatever the cost was of procuring title. So as we had little time to act, we went at it and McKinley procured a large majority of the people, I think 57 all told. The only ones I procured was my wife and I think Mrs. Jacobs and her daughter. *Well, the understanding we had—I instructed McKinley—was not to let those people know that—that is, not to talk personally with them in regard to the way we expected to obtain title, but to convey that idea to them through some friend, Tarpley or Wagner or some one that we had implicit confidence in, that they were to*

receive $100 for their right, and that was all there was to it; but under no circumstances was he to talk to any of the entrymen. Well, I believe there was a large number of filings made in January. We procured the entrymen from Roseburg, Albany, and Brownsville and some in Portland. And I concluded then to go east, as it was prearranged with McKinley and I that I should find a customer who would advance the money; and we had fixed a price between ourselves that we thought the land ought to be worth. I think it was about $7 an acre. So I went east. I think it was in January—might have been February—but at any rate it was after a lot of filings was made, and just before they were all made.

Most of the persons were procured by McKinley and Tarpley, the latter of whom had been employed by McKinley and Puter for that purpose (R., 390). McKinley's version of the origin of the scheme is consistent with that of Puter (R., 478-480): He was in Albany on January 4, 1900, where he saw Mealey, who told him of this timber and offered to select good land for him out of the tract at $40 per section. He returned to Portland, saw Puter, and they agreed to get filers. On the 8th Puter and McKinley were both at Albany and signed the contract with Mealey (R., 480). They started in to make filings on January 18, 1900 (R., 481), and this work was in progress when Puter left for the east to find a customer who would advance the money for proofs and buy the land.

Of the ten entrymen who testified at the hearing, six, Luella Ingersoll, née Beeman (R., 168); Mrs.

C. E. Lovejoy, née Moulton (R., 225); Wilson (R., 251); Wagner (R., 289); Saltmarsh (R., 434); Phillips (R., 452), swore that they were approached by McKinley, or some one in his behalf, and were asked to make filings upon the agreement that all of their expenses would be paid and that they would receive $75 or $100 in cash, and that they took up their claims in pursuance of that agreement.

A man named Hughes told the entryman Finley that McKinley was having persons file on some timber claims. (R., 270.) Dozier was told by Jaggy, who was also an entryman, that McKinley was locating people, and that he, Dozier, could make some money in that way. (R., 322.) Henry Blakely's attention was called to the scheme by John Harrison, an entryman. (R., 338.) Finley, Dozier, and Blakely all immediately saw McKinley, who told them exactly what was told the six witnesses first referred to, and they all filed in pursuance of the understanding had with McKinley. Harrison gave no substantive testimony (R., 369). His entry was made with and in the same manner as that of Henry Blakely (R., 341).

Mrs. Ingersoll and her husband were employed by McKinley to secure persons to file at $25 each, and they induced Jennie Moulton, Peter Buffington, and one other person to file. (R., 168, 170.)

Of the entrymen who were not witnesses, four, namely, Hugh Blakely, Cooley, Burford, and Stilwell, all come under the testimony of Henry Blakely as to the manner in which their filings and final proof were

made. (R., 339–341.) Henry Barr's claim was made with that of Saltmarsh. (R., 435, 439.) Charles Barr and John L. Green took up their claims with the witness Phillips and upon the same understanding. (R., 452–457.) Jaggy, Smith, and Adkinson all filed with and under the same circumstances as Dozier. (R., 335–336.)

An examination of the testimony of these entrymen will show that most of them had but little idea of the real nature of the transaction; they did not even read the papers which they signed nor did they know their contents. This is conspicuously illustrated by the case of Mrs. Ingersoll, who testified that "He (Puter) told me I was just to sign what he told me to. I didn't understand; I couldn't understand; he said I was just to sign the papers, and told me he would do the rest." (R., 175.) Other illustrations are Mrs. Moulton (R., 228) and Dozier (R., 331), neither of whom had any idea as to the effect of the papers.

When the entrymen went to make their applications and final proofs they were invariably chaperoned by McKinley, Puter, or Tarpley. Not an entryman paid out a penny for the land or for any expenses incident to its acquisition, and not a move was made by one of them throughout the whole proceeding unless directed by one of these three persons.

There is printed as an appendix to this brief a table showing each entry, the date of application, date of final proof, date of mortgage to Kribs, and date of deed to Willd. These mortgages were to run for three months and on their face were to secure the sum of

$600, which the defendants claim was to represent the amount of money advanced by Kribs for the purpose of purchasing the land, and all expenses.

Some of the entrymen knew that they were signing mortgages and deeds, but did not know how much the mortgage was for or what was its purpose. Mrs. Ingersoll testified that she understood that the mortgage was "the way he (Puter) had of covering the matter up." (R., 212.) When Blakely was asked why he gave a mortgage instead of a deed outright, he replied, "I can't tell you that; we done some funny things up there." (R., 353.) The mortgages were signed at the offices of a lawyer named Shute, at Roseburg, where some of the deeds to Willd were also taken, the remainder of the latter having been secured by the conspirators from the entrymen within a few days thereafter.

The entrymen had no purpose in making filings except to get the promised $75 or $100. They had no knowledge of what was to become of the land. This is particularly shown by the testimony of Mrs. Lovejoy (R., 229), Wilson (R., 255), and Wagner (R., 293). It is true that Blakely (R., 350-351), Phillips (R., 461), Wagner (R., 312), and Buffington (R., 1003-1005) all testified that they felt free to sell their lands to anyone, but it is nevertheless a fact that they did convey to Willd in pursuance of the agreement made before filing. In this connection attention is invited to the testimony of Tarpley, who was a witness for the Government, that *when the deeds and mortgages*

were taken there was no negotiation at all; the entrymen signed as a matter of course and received their money. (R., 421–422.)

There was some discussion before final proof between Henry Blakely and the other six who filed with him as to whether they might not sell the land more advantageously to some one else. Blakely thereupon sought the advice of Judd Mealey, who is a brother of William R. Mealey, and who is charged as a conspirator in case No. 159, and was advised by him to carry out his agreement with McKinley. (R., 350.) The reasons underlying this advice are not given by the witness and it is highly doubtful if he knew or asked them.

McKinley had considerable correspondence with Puter. (R., 512–542.) The last letter is dated March 24, 1900. Puter was in almost daily communication with McKinley and was directing the proceedings. In his letter of January 20 (R., 514–516) he states:

> I will inclose you all the money I can spare in this letter. * * * Now get in and file on all those claims and if you can't get enough there have Basil send some from Salem and get Glasses and those from Brownsville. I think you ought to get enough there by promising to pay $5 to some one for each one. * * * You know when one files they always have some friend. * * * You can get a raft of fellows in that saloon when the fight takes place. Get one and you get them all. * * * I wish you would try and get in all the women you can, for they are better than the men. (R., 516.)

In his letter of January 25 (R., 519–520) he tells McKinley to try to get enough people in Roseburg instead of Albany in order to save expense; to take no poor claims; that he can sell the tract quicker than he ever sold as soon as proof is made; that he will be out there with a party in a very short time, so as to have them see the tract beforehand and have the money ready. In his letter of January 28 (R., 520) he reiterates that if he can get the tract filed on he can sell it. In his letter of "Sunday, 18, 1900" (R., 528), he refers to the Northern Pacific contest and says:

> No one can prove anything; just keep quiet. One thing, you had no right to tell anyone you had that land for sale; that man you wrote to in West Superior has offered to everyone in that country for $5 per acre. I only seen one man there and told him all about it and to say nothing, for he is a man that understands all about the bus and has lots of money. * * * If we are not mighty careful we never will swing that tract. Now, what I want you to do is to say nothing to no one, only to those parties that filed, and to say nothing to them unless they tell you something they heard, for we will have to post them up just before they file. (R., 528, 529.)

The correspondence contains other matter equally significant.

McKinley was arrested on April 1, 1900, charged with subornation of perjury in these entries, released on bail furnished by Puter, and subsequently

discharged. (R., 543.) Before final proofs were made he knew of the arrangement between Puter and Kribs whereby the latter was to acquire the land for Smith. (R., 557–558.) His testimony as to why mortgages were taken when the deal could have been more easily consummated by taking deeds absolute, is as follows:

> Q. What was the function, then, of that mortgage there against the entryman himself, when you knew you were going to get your money from a man in Minneapolis?
>
> A. That was the reason, when the mortgage was drawn up, for the purpose of allowing these parties, if any of them wished to go ahead and wait the three months, and take it up, they had the privilege to do it.
>
> Q. Yes, but when they gave the deed right then and there, what was the purpose?
>
> A. To clean the thing up, if they wanted to deed it.
>
> Q. Didn't you clean it up much nicer if you didn't take a mortgage, but took a deed without any mortgage?
>
> A. That was not according to the arrangement I made with these parties. I made the arrangement with these parties that this mortgage should be taken; they should be allowed a certain time if they wished to sell to other people.
>
> Q. You didn't allow them any time?
>
> A. We didn't force them to take any deeds.
>
> Q. They just came along and took the $75 and went away?
>
> A. That was up to them.

Q. Didn't have any controversy with any of them about it, did you?

A. I don't think we had any very warm arguments; no. There might have been one or two that refused to do so, and there was two or three that I recollect that did refuse. (R., 560, 561.)

And as to the method of making the entries, he testified as follows:

Q. Every man that you approached, you told him there would be $75 in it?

A. Yes. That is——

Q. Then, when you approached a sufficient number to satisfy you in that way, and who had agreed to it, you took them to Roseburg? You told them when to go to Roseburg, didn't you?

A. Yes, sir.

Q. And you took them and paid their fare?

A. Me; and that is——

Q. And you placed them in a hotel at your direction when you got to Roseburg?

A. Yes, sir.

Q. And you piloted them to the land office and had them file?

A. Yes, sir.

Q. And you paid their hotel bill, and brought them back?

A. Yes.

Q. Most of them you took to the land, either on that same trip or at another trip?

A. Yes.

Q. Paying all expenses and looking after them yourself?

A. Yes, sir.

Q. Or having Dan Tarpley or Bas Wagner do it?

A. Yes, sir.

Q. Paid their expenses back to their residence?

A. Yes.

Q. Had the notice published?

A. Yes.

Q. Charged to you and paid by you?

A. Yes, sir.

Q. Then later you went around and told them it was time to make proof?

A. Yes, sir.

Q. Told them to be ready and where to be ready?

A. Yes, sir.

Q. Placed them on the train and paid the fare?

A. Yes, sir.

Q. Sent them again to the hotel with which you had an arrangement?

A. Yes, sir.

Q. To take care of parties brought there by you?

A. Yes, sir.

Q. At your expense?

A. Yes, sir.

Q. Then you made the proof?

A. Yes.

Q. Eliminating for a moment the contest and the trouble that you had between times——

A. Yes, sir.

Q. As soon as they had proved up they got that same $75 you had promised them in the beginning?

A. Yes, sir.

Q. You took a mortgage and a deed?

A. Yes, sir. (R., 575–576.)

Kribs admitted, after persistent cross-examination, that the purpose of the mortgages was to get a hold on the land with a view to acquiring the title (R., 1065). That is exactly what happened.

(b) The connection of Kribs and Smith with the fraud.

The brief for the appellants contends that Smith is a bona fide purchaser, but does not deny that Kribs had knowledge of the facts surrounding the filing of the applications and the making of final proof or that he took an active part in the latter. As to the knowledge of the fraud on the part of both Kribs and Smith and the former's active participation in it, attention is respectfully invited to the following:

It will be remembered that after a number of the filings had been made Puter went east to secure a purchaser. He thinks it was in January, but might have been in February. He first became acquainted with Smith early in 1900; it may have been in the fall of 1899. He met Smith frequently. (R., 660.) On his trip east he saw Smith and talked with him about another tract of land he had in Oregon. It seems that they failed to negotiate for this tract, and Puter spoke to Smith about the lands in this

suit. He thought he could deliver Smith the title for $7 or $7.50 an acre. Puter testified:

> Well, then he requested me to call on his agent, Fred A. Kribs, in San Francisco, as he had previously given me a letter of introduction to Kribs; and that whatever trade I made with Mr. Kribs in regard to Oregon lands would be entirely satisfactory with him and he would stay by it. So I think while I was East, I called on one or two other parties and I talked to them also about the matter. One man, I think, in Duluth another man in—I think it was Saginaw, Michigan. But at any rate, I was banking on Mr. Smith, as I thought he was the best customer, although I concluded to have the other fellows in tow for fear he would fall down on it. So at any rate, I went on to San Francisco, and I spoke to Mr. Kribs about it *and told him the situation.* He said that he would come to Oregon and he would look the matter over and if it was all right he would take it up with me. So I believe I met him a few weeks after that—a short time. He wanted to know what it was going to cost, and I told him that title hadn't been perfected to these lands, but I expected that I would be able to get them at a certain figure and there would be a certain amount of money required to make proof on the lands, and I would like to have him advance that money. Well, at that time he hesitated about advancing the money. He said he would go up and see about it. Well, the best of my recollection is he had come up and he had met McKinley;

I had either introduced him to McKinley or given him a letter; but at any rate he went up to the lands with McKinley and Tarpley or either one of them, and was satisfied to advance the money. I told him it would be necessary for to have at least $600 on the quarter section. And that I—I thought that I would, under the circumstances—having an equity in the land, etc.—I would be able to get hold of those lands after they proved up, and I could turn the title over to him for a certain figure. Well, there wasn't much said then. He didn't say whether he would advance the money or not. At any rate I know the Northern Pacific filed a contest against all those entries, and I went back on to Kribs again and I told him the circumstances, that I had to have somebody to back us up in the lands and that I thought I would be able to secure the lands for $7 or a little less, or $6.50. Well, at any rate, he agreed to—he said that as we was in the deal, etc., that he would stand by and advance the money to make proof on those lands. So it seems that the contest was set for the same day that the proof was to be made, and of course it was necessary to have the money there, but Kribs hesitated about having the money at that time. He thought it would not be necessary to have the money there for probably some time afterwards, as the testimony would be taken and would be submitted to the General Land Office before any money, but I insisted that I thought there would be a compromise; that the Northern Pacific wouldn't appear on the

> case and it was best to get the money there. So he agreed; he said he would wire Mr. Smith to forward the money, and he did; informed me that the money was there. So we all went to Roseburg on the day that proof was to be taken, and the contest, and I think the contest cases started in first, which lasted about two days; and I believe I employed Mr. Crawford and Shupe. I paid them $500 to defend me in the 57 cases. And Mr. Mays and Moulton and one or two other attorneys from St. Paul represented the Northern Pacific. (R., 662–664.)

After final proofs on some of the entries had been made and deeds had been procured, Kribs paid Puter all of the purchase money except $1,000, which Kribs held back by Smith's direction, until patents were obtained, "as there might be some trouble in obtaining them." (R., 665–666.)

Asked more particularly as to Smith's statement to him regarding Kribs's authority, Puter replied:

> He told me Mr. Kribs was—whatever Mr. Kribs said or done he would stand by; that he was out there looking after lands for him, and that he was his land agent; whatever trade that I made with him it was the same as making it with Smith.

Smith employed Kribs, on an acreage basis, to select and buy lands for him on the Pacific coast. (R., 1009–1010.) In March, 1900, which was after the applications had been filed and before final proof, Smith, Kribs, and Puter met at San Francisco. At

that meeting Smith directed Kribs to make an examination of the land (R., 1015), and Smith himself went out to the timber, accompanied by Puter, Kribs, and others, on May 21, 1900 (R., 1342). It is not conceivable that Smith and Kribs, who were both experienced land dealers, did not know, as a result of their negotiations with Puter, of the source of the titles they were to take and the manner in which those titles were to be acquired. They must have known that the tract was owned by the Government and they both admit familiarity with the timber and stone law. (R., 1060, 1061, 1073, 1351.) Nor would they have advanced $600 on each of these claims upon the mere chance that the entrymen would select them, as against the rest of the world, as their purchasers. One purpose of the mortgages may have been to protect their advances, but included in those advances must have been the sum of $10 on each entry which must be paid at the time of application (General Land Office circular No. 50), so that they must have known that at the time the filings were made there was some kind of an agreement with the entrymen.

Kribs was present at the hearing of the Northern Pacific contest, which was conducted at the time of final proofs. (R., 699.) It was he, together with Puter and Wagner (the latter of whom seems to have taken considerable part in the work), who made the compromise with the Northern Pacific attorneys, when one of the latter told Puter, Kribs, and Wagner: "Just as sure as you let it get to trial (Land Office

hearing) and let those entrymen take the stand, they will go like chaff before the wind, and you fellows will all go over the road." (R., 665.)

When the compromise was made between the railroad company and these conspirators, whereby 24 of the claims were relinquished by the entrymen, it was agreed that the railroad company would sell the 24 claims to Puter (who was acting for Smith) when patents should be obtained by the company. (R., 669.)

Kribs was in constant correspondence with Smith regarding the entries. He carried an account at the bank, the money for which was furnished by Smith, and made regular accountings to the latter. He admits that he destroyed all correspondence between him and Smith "that might not be interpreted in my favor." (R., 1108.) And Smith claims to have none of the correspondence, stating that it was either in the possession of Kribs or had been destroyed. (R., 1357.) *Omnia præsumuntur contra spoliatorem.*

Kribs was at Roseburg on the following dates (R., 632–634): April 13, 1900, to April 21, 1900; April 25, 1900, to May 11, 1900; May 14, 1900, to May 22, 1900; June 1, 1900, to June 4, 1900; June 5, 1900, to June 6, 1900; July 7, 1900, to July 31, 1900.

From the foregoing, taken in conjunction with the fact that in case No. 159 (which is to be heard with the case which is the subject of this brief), it appears that Kribs, in May and June, 1900, assisted in the filing of 18 additional applications for land in the

same vicinity and, under the same circumstances as those in case No. 46, it must be concluded that Kribs knew the whole situation. It will be remembered that it was back in April when Kribs and Puter came together, according to their testimony, and in the very nature of things it can not be denied that Kribs knew all about the filings in the entries in case No. 159. That in itself was sufficient to cause him to make some inquiry as to the character of the filings in case No. 46. His statement that he had no suspicion that there was anything wrong in the entries we will not attempt to characterize.

Puter was asked about a statement he wrote to the Secretary of the Interior in January, 1909, in which he stated:

> In the spring of 1900 C. A. Smith, a multimillionaire lumberman of Minneapolis, Minnesota, F. A. Kribs, his Pacific coast agent, and S. A. D. Puter of Portland, Oregon, entered into an agreement whereby the latter was to locate a group of entrymen on a large tract of timber in Linn County, Oregon, in the interest of Smith, who was to furnish all necessary funds, with the understanding that deeds to the various tracts thus acquired were to be made to whomsoever he might designate.

He replied that that is the substance of what he then and there, on the stand, intended to say. The communication then continues:

> Soon after the lands had been filed on Smith, Kribs, and Puter made personal in-

> spection thereof, and upon this occasion Smith directed Puter relative to the method of transferring the titles.

As to that, Puter said that it was Kribs who directed the transfer, and not Smith. (R., 709.) The statement then continues:

> Smith furnished the money with which to pay for the lands when the final proofs were made, and all the entrymen, in accordance with instructions from him, thereupon executed deeds in favor of John A. Willd, of Minneapolis, Minnesota, a stockholder in the C. A. Smith Lumber Company of that place, and likewise a relative of Smith's.

Puter confirmed the foregoing except to say again that it was Kribs who directed the making of the deeds and not Smith (R., 711).

From January 18, 1901, to January, 1902, which was after final proof and before the patents were issued, Puter and Smith were in direct correspondence regarding the land office investigations, the Stratford affidavits and other matters connected with the entries and the patents. (R., 717–730.)

When Smith ascertained that the land department was making an investigation through Stratford and others, he kept after Puter, continually asking his advice as to what should be done. The latter told Smith that the special agents in Oregon were very friendly and were making good reports, but that he thought some work should be done at Washington. Smith gave him letters to a prominent attorney there

and to others. Puter went to Washington, and as soon as he arrived he received a telegram from Smith not to see the parties he had spoken of; that he had heard from Oregon. (R., 671.)

That Smith was close behind the investigation is shown by Puter's telegram, dated Washington, D. C., January 19, 1901, to Smith:

> Fred (meaning Kribs) wires sworn statements sent Stratford follows in few days. Haven't spoken to anyone here. Leave for Chicago to-morrow.

This telegram evidently was in response to the one which Puter testified he had received from Smith while in Washington.

When Stratford was making his investigation, Kribs brought Stratford to Puter and introduced him. (R., 673.) Some time in 1904 Puter had a disagreement with Smith as to the settlement of his account; he called up Kribs by telephone and told him that unless Smith settled the account he would go to Washington and repudiate his affidavit and expose the fraud. Smith thereupon paid him the amount he claimed. (R., 676.)

Notwithstanding the foregoing facts, solemnly proved by the record, Kribs and Smith swore that when they took the deeds they had no suspicion of any irregularities in the entries. Smith admits that he knew there was some trouble; he doesn't think he understood the nature of it "but does not remember as to that." (R., 1375.) Appellants will probably

concede that after applications and before final proofs Puter told Kribs the whole situation regarding the titles; that Smith furnished the money for the entire transaction; that Kribs was paid 27½ cents per acre for obtaining the land for Smith; that Puter and McKinley received the difference between $600 advanced by Smith for the Government price and expenses and $6.50 per acre on each entry, less the $75 or $100 paid to the entrymen; that the entrymen received those sums; and that Smith got the land.

THE ENTRIES WERE IN VIOLATION OF THE TIMBER AND STONE ACT.

1. The timber and stone act forbids the making of any entry by one for another, the making of any entry in pursuance of a speculative purpose, and the obtaining of more than 160 acres by any one person or association. These three prohibitions, though dictated by one and the same general policy, are independent and distinct.

The text and policy of the act discussed.

The first section provides that public lands, valuable chiefly for timber but unfit for cultivation, etc., may be sold to actual or intending citizens of the United States "in quantities not exceeding one hundred and sixty acres to any one person or association of persons at the minimum price of two dollars and fifty cents per acre."

Section 2 provides that any person desiring to avail himself of the provisions of the act shall file an affidavit stating, among other things—

> That deponent has made no other application under this act; that he does not apply to purchase the same *on speculation*, but in good faith to appropriate it to *his own exclusive use and benefit;* and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself.

It concludes as follows:

> If any person taking such oaths shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he may have paid for said lands, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona fide purchasers, shall be null and void.

Section 3 provides, *inter alia*, that when this initial affidavit is filed, the register of the land office shall post a notice of the application, and that the applicant shall cause a copy of it to be published in a newspaper of the vicinity for sixty days, and that at the end of that period the final proof may be made and the land purchased for the statutory price. The proofs which are here required relate to the publication of the notice, the character of the land, and the nature of the improvements thereon, if any.

The remainder of the statute consists of general provisions respecting the taking of timber from the public domain.

The policy of this statute, evident upon its face and confirmed by the proceedings in Congress which attended its enactment, was this: To supply timber to meet necessities which had arisen in the States named, without at the same time opening the door to the abuses of engrossment and speculation, as explained to Congress by those who had it in charge. (See *infra*.) The occasion for the measure lay in the fact that under the law, as it then was, there existed no way whereby the local requirements of the farmer and the miner could be adequately met without resort to naked theft of the public timber, or to the even more reprehensible practice of obtaining titles under the homestead and preemption laws by fraudulent misrepresentations. There was no other motive for the Government to dispose of these lands—not even the revenue motive. The price fixed by the statute was but an incident to the disposal, and the sole object of the disposal was to supply timber for local use where it was needed. The act was opposed upon the ground that it would lead to speculative abuses, and to the passing of large bodies of public timber land into the control of the monopolist. For answer to these objections the champions of the bill pointed to the safeguards of the bill itself, and the bill was evidently passed in the belief that these would

suffice to prevent the evils suggested. That they were very far from sufficient experience has proven again and again, but that the protective features of this act are reducible to the farce that they seem to opposing counsel has yet to be determined

To insure equality of benefit and prevent the massing of large holdings in one ownership, the first section of the act declares that no more than 160 acres shall be entered by any one person or association. Even if this provision stood alone, it would be enough to condemn all attempts to secure more through the agency of mere tools or dummies who permit their names and their "rights" to be used for the benefit of some hidden principal. *United States* v. *Keitel*, 211 U. S., 370; *United States* v. *Trinidad Coal Co.*, 137 U. S., 160.

But the second section goes much further. It, in effect, forbids not only the presence of any agreement, direct or indirect, between the applicant and any third party, but also the making of any application "on speculation." The applicant must desire the land "in good faith to appropriate it to his own exclusive use and benefit"; he must not have made, "directly or indirectly," "any agreement or contract in any way or manner, with any person or persons whatsoever," by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself.

2. The evidence proves conclusively that both the letter and the spirit of the statute were ruthlessly disobeyed.

(a) *The purpose and result of the conspiracy involve a complete frustration of the statutory safeguards.*

Exitus acta probat. The conspirators succeeded in engrossing in one hand an immense area of valuable timberland. This was their purpose from the beginning, and they accomplished the purpose, as they intended always, by a direct and shameful abuse of the mechanism of the statute. Thus they achieved the very result which the statute had been so carefully constructed to prevent.

(b) *The unlawful beginning and the unlawful end of the process are not purged of their illegality by any independent purpose attributable to the entrymen in this case.*

In the first place we would observe that the illegality of the entries does not depend upon proof that the entrymen were guilty of perjury or of any conscious wrongdoing. The fact is patent that those who made the filings were throughout the tools of superior minds. They were herded from place to place like sheep. They were people who were not inclined to commit fraud or crime but were wholly lacking in business experience and were likely to follow without question the business suggestions of others. Among them were women, farmers, laborers; one was a painter and afterwards a driver; another was a bartender; there were also a plumber, a waiter, and two blacksmiths. We do not contend

that these men and women could be convicted of perjury. As was said by Mr. Justice Brewer in *United States* v. *Detroit Co.*, 200 U. S., 322, 329:

> It is quite likely that the entrymen were not conscious of wronging the Government, and thought that if it received the full price demanded that was enough. The testimony of one witness suggests at least that they may have been advised that there was no contract unless it was in writing, and that hence they could conscientiously take the oath required in connection with an entry. So, without casting any imputation of intentional perjury on those parties, we agree with the Court of Appeals that the testimony points strongly to the fact that the entries were in pursuance of an understanding or agreement with the Martin-Alexander Company, that, as it was advancing all the money, the entrymen should convey to it the standing timber at a fixed price.

In that case, the Martin-Alexander Lumber Company furnished all of the money to the entrymen, most of whom, if not all, were its employees, to make timber entries, and immediately afterwards took conveyances from the entrymen. These mill employees were in the hands of several leaders or promoters, just as in the case at bar. They did what they were told. It is natural enough that the appellant (Brief, p. 58 *et seq.*) should seek to persuade the court that to disturb its titles must mean the branding of these humble citizens with the stigma of crime, for on no other theory could the entries be sustained.

Some or all of the entrymen may have thought they were acting lawfully; but this can not be material. The statute lays down certain indispensable conditions without which its benefits are strictly withheld. If those conditions were absent in this case, no amount of illusion in the minds of the entrymen could supply them.

(c) *The condition against prior agreement was violated.*

Both courts below have found that the entrymen agreed to make the filings, and this is a reasonable interpretation of the evidence as a whole. The testimony of these filers, and, indeed, of McKinley, Puter, and Tarpley, plainly shows that the persons who were solicited to make filings were told that they would receive $75 or $100 for their claims. The testimony of most of them as plainly shows that they were ignorant of what they were signing, both as to the land-office papers and the deeds and mortgages. It is said in the brief for appellants that the scheme of these promoters was that there should be no agreement with the entrymen. Puter testified that that was his plan and that he directed McKinley and Tarpley not to "talk" with the persons whom they approached. That scheme was plainly impossible of execution, for the inducement to make filings was the offer of $75 or $100 in cash. Such was invariably the case. What was the consideration flowing from the entrymen? It was not, of course, the mere act of filing. Puter further testified that in making their calculations to market the land they figured they

could afford to pay each entryman $100 for his right. Each one of them did what he was told and received his consideration. The efforts of counsel for the defendants to make the entrymen testify that they felt at liberty to sell the land to some one else bore fruit in several instances. Of course they were at liberty to make other disposition of the land. They were not legally bound by the agreements, because the statute, by its terms, nullifies them. From a moral point of view the obligation felt by each entryman was of course an individual matter.

It is doubtless true that when these agreements were made no particular purchaser had been found. But the agreement had been made by the entrymen with the promotors of the scheme to deed the lands to some one whom the promotors might name. The identity of the vendee may not have been fixed in either the minds of the entrymen or of the other parties to the agreement, but that did not destroy the element of agreement, for, failing to find a customer, McKinley or Puter could have taken title to the lands in pursuance of the agreement, just as Kribs became the mortgagee in the mortgage which most of the entrymen were told they were to give, and just as Willd became the vendee. If the entrymen did not understand that they were agreeing to give deeds to their claims, pitiable indeed must have been the state of their mentality, for they raised no question at the time of signing the deeds, except in a few instances; and then they were conveyed immediately on the advice of Mealey.

The promoters were careful from the very inception of the scheme to suppress the facts, and from the time the entries were first questioned by the Northern Pacific Railroad Company until the time the patents issued they adopted any means, including bribery of the Government agents, to achieve their ends. They were experienced timber operators. They knew all about the timber and stone act and they saw the necessity of making the filers believe there was no prior agreement. It is possible that some of the entrymen did not so believe, but the incontestible fact is that they were offered so much for their rights and in pursuance of that offer made their filings, and subsequently the mortgages and the deeds. The testimony of Kribs is plainly evasive and a weak attempt to bolster up the legality of the filings and to show that he had no knowledge of the understanding upon which they were made.

It may be true that in some instances the entrymen were not directly approached by one of the conspirators, but that upon hearing it reported in that neighborhood that they could sell their rights, took the initiative. But in every instance the contracting parties came together prior to filing.

(d) *If there were no prior agreements, the condition against excessive entry was violated.*

But if the evidence were insufficiently definite to prove antecedent agreements, the appellants would merely be driven against the other prohibitions of the statute. This fact stands out clear: None of the entrymen intended to acquire the land for his own use

and benefit. If we say that they had no definite intention at all, but simply did what they were told, in the hope of making some money, but with no real comprehension of the process, they all become the agencies (rather than agents) through whom a large amount of land—far exceeding the statutory maximum—was procured in the interest of one man. This condemns the entries without regard to the provisions concerning prior agreement or speculation; and so it has been held under the coal-land law from which those provisions are omitted. *United States* v. *Keitel*, 211 U. S., 370; *United States* v. *Trinidad Co.*, 137 U. S., 160.

(e) *If* (c) *and* (d) *are incorrect, the entries were speculative.*

On the other hand, if the entrymen had intended to dispose of their rights after filing, either to the conspirators or to anyone who might be minded to pay the Government price and take over the titles, that would have been a violation of the provision against speculative filings. The statute evidently contemplates that no one shall come to the land office for its benefits who does not honestly intend to acquire the land for himself. To prevent speculation in the right of entry is one of the principal objects of the affidavit required by section 2. The applicant may do as he pleases *after* he files (*Williamson* v. *United States*, 207 U. S., 425); but *at the time of the filing* his mind must be free, not only of any agreement to act for or sell to another, but also of any purpose to traffic in the right of purchase merely to make money from it.

(f) *Further as to the element of speculation. United States v. Budd and the legislative history of the act considered.*

Counsel cite the familiar case of *United States* v. *Budd*, 144 U. S., 154, 163, in which, referring to the purchaser from the entryman, Mr. Justice Brewer observed:

> Montgomery might rightfully go or send into that vicinity and make known generally or to individuals, a willingness to buy timberland at a price in excess of that which it would cost to obtain it from the Government; and any person knowing of that offer might rightfully go to the land office and make application and purchase a timber tract from the Government, and the facts above stated point as naturally to such a state of affairs as to a violation of the law by definite agreement prior to any purchase from the Government—point to it even more naturally, for no man is presumed to do wrong or to violate the law and every man is presumed to know the law.

If these words were intended to mean that it is lawful to file, without any intention to buy the land for oneself, but with the sole object of turning over the right of purchase to some promoter or lumberman who has made a general offer for such lands, we respectfully submit that the words should be recalled; and we suggest that, in any event, the statement should be qualified. Such a filing, even if it did not involve a prior agreement, would be a plain violation of the prohibition against filing on speculation. This feature of the statute appears not to have been con-

sidered in the *Budd case*; and, furthermore, we believe that Mr. Justice Brewer did not intend to convey the meaning which opposing counsel have attributed to his words. The question before him was whether there was evidence of a prior agreement. The majority of the court, over the dissent of two justices, excluded evidence concerning other entries not mentioned in the bill. This reduced the Government's proof to certain circumstances which were held insufficient. Among these were the circumstances that Montgomery had made generally known his willingness to purchase timber lands in the vicinity, the filing *and purchase* by Budd, and the subsequent conveyance by Budd to Montgomery. The object of the above quotation was, we think, to show that such coincidences as these were not enough to demonstrate that the entryman filed in pursuance of a prior agreement, or that he did not file for his own use and benefit. He might not have been actuated by the offer at all when he filed. His purpose to sell may have come afterwards.

Suppose a general offer be made to buy after filing or final proof, and to furnish all money needed to pay the Government and the other expenses, and one entitled to file does so in pursuance of that offer and with the intention of deeding his land to the person making it: If all idea of agreement be eliminated and the acts and motives of the entryman alone considered, the entry is clearly made upon speculation; *Woodward et al.*, 42 L. D., 440. Nor does this imply that the entryman may not have an unre-

stricted right to sell after filing; *Ib.* It is quite clear that when Congress spoke of speculation, it was not speaking of the agreement or contract referred to later on in the statute. The statute declares that the affidavit must state that the appellant "does not apply to purchase the same on speculation but in good faith to appropriate it to his own exclusive use and benefit, *and* that he has not, directly or indirectly, made any agreement or contract * * * by which the title he might acquire * * * should inure, in whole or in part, to the benefit of any person except himself."

There is no inhibition, it is true, upon the sale of the land after the entry is made, but in order to avoid speculation the entryman should make his entry with no definite vendee and no prior offer in mind, however general in character, for then the chief difficulty which Congress sought to avoid in framing the statute—the acquisition by one person or corporation of a quantity of land in excess of that allowed by it—would be overcome. The danger lies in the inducement held out by capitalists to individuals to make entries, whether that inducement takes the form of a specific agreement or general offer.

Referring now briefly to the legislative history of the act: Senator Kelly, on behalf of the Committee on Public Lands of the Senate, reported Senate bill No. 6 on February 16, 1876 (Cong. Rec., vol. 4, p. 1100). He said, among other things:

> It has been too frequently the case that persons desiring to cut timber on the public lands will take either a preemption or a home-

stead claim, go upon it, cut down and sell the timber, and never pay for or enter the land. The purpose of this bill is to do away with these trespasses upon the public domain, so that persons may acquire title without residence and have an interest in the timberlands and protect them from destruction and protect them from trespass. * * * The Government should receive something for its lands—there is no reason why it should not—and the committee, after careful consideration, thought that many persons, rather than go upon a tract of land as a homestead and reside upon it five years, would prefer to pay $2.50 per acre, and in that way it will make an honest business, and people will get the timber honestly, instead of cutting it from the public land as trespass.

There is another reason, as I said, many persons owning claims in the vicinity of the timberlands trespass upon them, cut down the timber, and take it for the purpose of fencing and building, removing it from the public lands. The object of this bill is that they may acquire the right to this timber by purchasing the land. Then they will have an interest in protecting the timber instead of destroying it.

I may say further that in the mining countries, where it is necessary to have timber for mining purposes to smelt the ores, the timber is removed from the public lands now by any person who may choose to take it. It may be said that they should be punished for their trespass. They may be, but they never are.

76830—15——5

> In fact, it becomes a necessity to have timber to smelt the ores and to conduct mining operations wherever they are carried on; and to say that timber shall not be taken is to say that we simply mean to shut down on mining operations forever.

In the consideration of a proposed amendment to the effect that the entryman shall swear that he has not executed any mortgage or other instrument upon the land by which the title thereto may be vested in any other persons, Senator Sargent said:

> I think the friends of the bill have no objection to the amendment proposed by the Senator from Minnesota; I certainly have none myself, and if the machinery of the bill can in any way be guarded so that speculators can not take advantage of this law if we pass it, I shall be very glad to have that done. Nearly the whole bill is taken up with provisions hedging in opportunities for speculators to avail themselves of its provisions to acquire large tracts of land under it. * * * This is hedged around by oaths and papers and documents in every form which careful ingenuity can provide. If any Senator, as the Senator from Minnesota has proposed, can devise language which will still more guard that portion of the bill, we would like it to be guarded, because, while I would desire that there be an opportunity for our people honestly to carry on this business, I do not wish this land to be absorbed by speculators. * * *
>
> Mr. HOWE. Why not provide that these lands shall be offered at public sale?

Mr. SARGENT. Because then you give an opportunity to speculators; (Vol. 4, p. 1101, Cong. Rec.).

* * * * *

Mr. SARGENT. Will the Senator from Illinois allow me a moment? I should like to say to the chairman of the committee that the committee did endeavor to guard it, and my impression is that the bill does guard it; or, if it does not, I certainly concur with the suggestion that it should be made to do so. The affidavit which the enterer is required to make says, among other things, that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and not for sale. * * *

That is to say, there are two things: In the first place, *no speculation whatever moves him in this matter*, and in the next place, *the title is entirely for his own use.* But if the Senator is not satisfied with that language, I will say to him, for the sake of the people of my own State, to propose an amendment which will cover this. I think this does; (Vol. 4, p. 1103, Cong. Rec.).

The bill was not passed at that session, but the language regarding speculation and sale is exactly the same as in Senate bill No. 926 of the following session, which became the present timber and stone act.

These utterances of Senator Sargent do not appear to have been made on behalf of the committee and may not, perhaps, be used to show the intent of Congress. But they do show the construction put upon

the act by a member of the Senate at that time; and it is submitted that if the speculation sought to be avoided by the timber and stone act is distinct from the prior agreement also prohibited, the first must have been intended to reach just such a state of affairs as would be presented by the Budd case, if it were as opposing counsel construe it. The entryman must make his filing in good faith. Not only must he not have made a specific agreement to sell his land, but he must not have been induced to do so through any general offer coming from any person or set of persons, for it is not only a specific prior agreement, but just such general inducements that result in speculators acquiring vast tracts of the public domain, and, as Senator Sargent said, it was this very condition Congress was seeking to avoid. The capitalist would make his offers in vain if the entryman were restrained from making his filing in pursuance of them.

Another distinction between the case at bar and the Budd case is, of course, found in the fact that in the latter the expenses of the entrymen were not paid by Montgomery, nor did he supervise the making of Budd's entry and his final proof.

(g) *Other cases cited by appellants.*

Appellants' brief, page 68, says: "The arrangement to mortgage the land for the purchase money and expenses connected with the entry is not forbidden," citing *Hafeman* v. *Gross*, 199 U. S., 342. That case arose under the preemption law which con-

tains practically the same provisions as to speculation and prior agreement as the timber and stone act. Hafeman made an entry, but before doing so, entered into a contract with Gross, whereby the latter agreed to pay one-fourth of all the expenses in securing the entry, and Hafeman agreed to give Gross one-fourth of the *proceeds* of the land when he should sell it after obtaining patent, deducting one-fourth of the expenses. It was held that such an agreement does not constitute a mortgage, deed of trust, or contract for any specific lien of any kind, but is simply a promise to pay money in case of a sale by the patentee and could not be enforced against the land. There was a dissent by Mr. Justice White, Mr. Justice McKenna, and Mr. Justice Holmes.

Adams v. *Church*, 193 U. S., 510, is also cited. That case arose under the timber-culture act of June 14, 1878 (20 Stat., 113). Steel and Adams were partners. At the time the partnership was formed Adams was the owner of a timber-culture claim, and the plaintiff contended that Adams had agreed that the claim should be conveyed to and become a part of the assets of the firm as soon as Adams should acquire title from the Government. Section 2 of the act contained the same provisions as to speculation and prior sale as the timber and stone act. The court distinguished the timber-culture act from the homestead act on the ground that under the former the entryman is not required to show at the time of final proof that he has not alienated the land, while

under the latter act he is so required. In other words, an entryman under the timber-culture law was free to convey an interest in the land after his entry and before final proof. That is what was held in *Williamson* v. *United States*, 207 U. S., 425, which was an indictment for conspiracy to commit subornation of perjury in final proof affidavits under the timber and stone act. *United States* v. *Biggs*, 211 U. S., 507, and *United States* v. *Sullenberger*, 211 U. S., 522, are to the same effect. But the proof here is clear that these entrymen were all approached and promised $75 or $100 for their land at a time when they had no idea of making entries.

SMITH WAS NOT A BONA FIDE PURCHASER.

1. Where the defense of bona fide purchase for value without notice is set up, the burden of proof is upon the defendant.

United States v. *Brannan* (C. C. A.), 217 Fed., 849; *United States* v. *Hill*, 217 *ib.*, 841; *Boone* v. *Chiles*, 10 Pet., 177; *Washington & Georgetown R. Co.* v. *Hickey*, 166 U. S., 521; *Smith* v. *Orton*, 18 How., 263; *Nickerson* v. *Meacham*, 14 Fed., 881–83; *United States* v. *Detroit Timber & Lumber Co.*, 131 Fed., 668; see, also, *Sillyman* v. *King*, 36 Iowa, 207; *Lewis* v. *Lindley*, 19 Mont., 443; *Raymond* v. *Flavel*, 27 Oreg., 248; *Prickett* v. *Muck*, 74 Wis., 207; *Prestwood* v. *McGowan*, 148 Ala., 475; *Kerr on Fraud and Mistake*, 369; *Greenleaf on Evidence* (15th ed.), § 51; 16 *Cyc.*, 405; *Story on Eq. Pl.*, § 805; 1 *Beach Mod. Eq. Pr.*, § 314; 1 *Bigelow on Fraud*, 130.

2. Kribs had actual notice, and notice to Kribs was notice to Smith.

It sufficiently appears that when Puter first saw Smith in Minneapolis Smith told him to see Kribs, that Kribs was his agent, and that he would stand by any deal which Puter made with Kribs. It is also clear that when Kribs left Minneapolis and went to the Pacific coast he did so under an agreement with Smith to select lands for him, negotiate for them, and to do everything necessary to acquire the titles, and that Smith for this service was to pay Kribs 27½ cents per acre. Therefore notice to Kribs was notice to Smith. The trial court held that while there might be some doubt as to Smith's actual knowledge of the fraud, Kribs was his agent, authorized to purchase the property, and whatever knowledge Kribs acquired was chargeable to Smith (R., 1413). And the opinion of the Court of Appeals is to the same effect (R., 1452). The agency is clearly established. Notice to such an agent is notice to the principal; not constructive, but actual notice.

> The rule of law that charges the principal with notice of every fact coming to the knowledge of his agent, which is connected with the business in which the agent is employed, may be tersely expressed thus: *Notice to an agent is notice to the principal.* It is generally regarded as *constructive* notice to the principal; but it is at least doubtful whether this is a correct use of the word "constructive," as applied to the law of notice. To employ it in this connection is only to introduce confusion in

legal terminology by giving to a word a peculiar signification where it has quite a different one when applied to other branches of the same subject. To qualify in this manner the notice which is given to an agent would be to cut off entirely from the possibility of notice a large class of purchasers in cases requiring *actual* notice. Corporations can only act through agents in the transaction of their business, and there are matters of which, to affect them, they, as well as individuals, must have actual notice, as in case of equities affecting negotiable instruments, or secret trusts affecting the title to lands purchased by the party to be charged with notice. Whether, therefore, the notice by which the principal is to be affected is *actual* or *constructive* depends upon the manner in which it is brought home to the agent. If the agent has actual notice, the principal is charged with notice of the same kind. If the agent is constructively notified, so is the principal. But if we wish to state the rule with greater accuracy, its true meaning may be given by stating it as it is universally understood, that notice to an agent is *equivalent* to notice to the principal. Wade, Law of Notice, par. 672.

Whether the agency be general or special, and whatever be the title or designation of the agent, if he has sufficient authority in the premises to contract for the benefit of his principal, that which would affect the validity of such contract, if known to the principal at the time of making it, will have the same effect when known only to the agent. *Ib.*, par. 677.

This, of course, is elementary. No reason for a departure from this rule exists in this case.

In the case of *The Distilled Spirits*, 11 Wall., 356, this question is elaborately discussed. Part of the summary of Mr. Justice Bradley is as follows (p. 367):

> The general rule that a principal is bound by the knowledge of his agent is based on the principle of law that it is the agent's duty to communicate to his principal the knowledge which he has respecting the subject matter of negotiation, and the presumption that he will perform that duty. When it is not the agent's duty to communicate such knowledge, when it would be unlawful for him to do so, as, for example, when it has been acquired confidentially as attorney for a former client in a prior transaction, the reason of the rule ceases, and in such a case an agent would not be expected to do that which would involve the betrayal of professional confidence, and his principal ought not to be bound by his agent's secret and confidential information.

It is said in the brief of the appellants that the rule that notice to an agent is notice to his principal has no application where the transaction is of such a character that the interest of the agent conflicts with that of the principal. We need not, however, review the authorities cited in support of that contention. We concede them. But they do not apply to this case. Kribs was not acting adversely to Smith. The fact that he was to be paid on an acreage basis instead of so much per month or so

much for his whole service could not substract any of the normal incidents of the agency.

An exception to the fundamental rule that notice to an agent is notice to his principal is thus stated in Pomeroy's Equity Jurisprudence (sec. 675):

> It is now settled by a series of decisions possessing the highest authority that when an agent or attorney has, in the course of his employment, been guilty of an actual fraud contrived and carried out for his own benefit, by which he intended to defraud and did defraud his own principal or client, as well as perhaps the other party, and the very perpetration of such fraud involved the necessity of his concealing the facts from his own client, then, under such circumstances, the principal is not charged with constructive notice of facts known by the attorney and thus fraudulently concealed. * * * On the contrary, a presumption arises that no communication was made, and consequently the principal is not affected with constructive notice.

Kribs did not defraud Smith; hence there was no necessity for concealment of the facts from him. The fraud was committed in Smith's interest. Mr. Pomeroy states the limit of this exception as follows (sec. 675):

> The courts have carefully confined the operation of the above exception to the condition described, where a presumption necessarily arises that the agent did not disclose the real facts to his principal, because he was committing such an independent fraud that

> concealment was necessary to its perpetration; it has never been extended beyond these circumstances. It follows, therefore, that every fraud of an agent in the course of his employment, and in the very same transaction, does not fall within this exception; *and most emphatically, it does not apply when the agent's fraud consists merely in his concealment of material facts, within his own knowledge, from his principal.*

If there is any case to which the presumption applies, it must be one in which an agent, on behalf of his principal, obtains property by fraud; otherwise, every transaction of that character could be conducted through an agent without liability upon the part of the principal.

3. Smith was not a "bona fide purchaser" within the meaning of the timber and stone act.

Appellants' counsel appear to place some reliance upon the proposition that the term "bona fide purchaser," as used in the statute, means something different from the same term when employed by courts of equity; that it is so much broader in scope that it would include the case of Smith.

Conceding, *arguendo*, that the provision is something more than declaratory of the common law, it is apparent that the inclusion of one class of purchasers means the exclusion of others, and neither under the common law meaning of that term nor under any sane construction of it as used in the statute, could it be extended to include a purchaser who participates in or has actual notice of a fraud.

The case of *United States* v. *Winona & St. Peter R. R. Co.* 165 U. S., 463, involved the act of March 3, 1887 (24 Stat., 556), and the act of March 2, 1896 (29 Stat., 42). The act first mentioned provides for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of unearned lands, etc. The second relates to patents erroneously issued under a railroad or wagon-road grant and contains this provision:

> But no patent to any lands held by a bona fide purchaser shall be vacated or annulled, but the right and title of such purchaser is hereby confirmed.

The bill in that case prayed for a cancellation of a certification of certain lands to the State of Minnesota for the benefit of the defendant company. At the time of the filing by the railroad company of its map of definite location there were on the records of the General Land Office homestead and preemption entries on the lands afterwards certified to the State. These entries were canceled before the certification. The railroad company sold and conveyed the lands to parties who paid value and bought believing the company's title was good. The suit was brought upon the theory that as these entries were on the records of the land office before the filing of the map of definite location, the lands were excepted from the operation of the grant and therefore did not pass to the railroad company nor to its vendees. The act of March 2, 1896, was passed during the litigation and before the case reached

this court. Mr. Justice Brewer, for the court, held that the saving to bona fide purchasers raises a presumption that something more than the common-law meaning of the term was intended and that Congress had in view the protection of parties other than those theretofore protected by the general law. It was accordingly held that persons who had given value, had acted in good faith, and in the honest belief that their title was good, despite the fact that the entries were of record at the time the grant took effect, were intended to be protected. There was no fraud in the case, nor was the Government in any manner overreached.

The same is true of *United States* v. *Southern Pacific R. R. Co.* (184 U. S., 49), in which it was again held that the acts of March 3, 1887, and March 2, 1896, *supra*, and also the act of February 12, 1896 (29 Stat., 6), evidence a purpose to uphold the titles of parties who in good faith had purchased land from railroad companies which they erroneously supposed to appertain to the railroad grants. That was a suit to quiet the title of the Government to 700,000 acres of land within the limits of the forfeited grant to the Atlantic & Pacific Railroad Company and claimed by the defendants under certain junior grants to the Southern Pacific Company. And as showing the limitation upon the term "bona fide purchaser" in the act of March 3, 1887, the court rejected one purchase for the following reasons: Section 5 of the act is limited to vendees from the railroad company who are citizens of the United States or who have

declared their intention to become such. A foreign corporation had purchased one tract and during the pendency of the suit had conveyed the same to one Graves. Graves was the attorney for the corporation and of course knew it was foreign. The consideration passing from him to the corporation was that he should devote his services to the protection of the title of the corporation and that he was to make out of it all over and above the amount of the purchase price given by the corporation. Upon this state of facts this court held that Graves was not a bona fide purchaser.

The case of *Fee* v. *Brown* (162 U. S., 602,) is also cited by appellants. Here again the statute was remedial. The case involved the location of a certificate of Chippewa scrip on a tract of land in Colorado and the validity of a patent erroneously issued on the location. Such scrip could only be located on the original reservation in Wisconsin, but locations had been made elsewhere. Congress passed an act authorizing purchasers of land located outside the reservation in Wisconsin to perfect their titles by paying the Government price, provided the Secretary of the Interior should find that they were purchasers in good faith. In an action of ejectment between Fee and Brown it was contended that as the patents were void on their face, parties holding under scrip could not be deemed to be purchasers in good faith. This contention was overruled.

If the purchase of Graves in the case of *United States* v. *Southern Pacific Railroad Co., supra*, is not

within the scope of the protection, clearly one who participates in a fraud or who has knowledge of it can not invoke the saving clause.

The statutory provisions involved in the above cases were plainly designed for the protection of a class of purchasers who, by reason of their duty to take notice of the acts of the Government, were constructively notified of the defects of the titles when they bought. It was upon this ground that the term bona fide purchaser was given the broader meaning. No such reason exists in the timber and stone act. The provision was there introduced out of caution for the purpose of limiting the sweeping provision for forfeiture which preceded. It certainly could not have been intended to permit a purchaser to reap the benefits of gross frauds perpetrated by his own agent in the very transactions which result in the passing of the title from the Government.

In *United States* v. *Detroit Timber and Lumber Co.*, 200 U. S., 321, the Martin-Alexander Lumber Company had acquired a large number of timber entries through their employees, which was held a fraud. The Detroit Company bought out the Martin Company. It was contended by the Government that the contract of sale from the Martin Company to the Detroit Company was not executed until March 1, 1901; that on January 14, 1901, Martin resigned as president of his company and that Clark, the president of the Detroit Company, was elected president of the former company; that Clark, as the president of the Martin Company, was charged with all knowl-

edge of the fraud which the Martin Company had; and that therefore the Detroit Company had constructive notice. Appellants' brief erroneously states that Martin became the president of the Detroit Company—a very different matter. The bill charged and the answer admitted the sale on January 14, 1901, and the court held that the real contract between the parties was entered into before Clark became president of the Martin Company and refused to hold that the Detroit Company had constructive notice.

There is nothing in the *Detroit case* which operates against the rule, so clearly applicable to the case at bar, that notice to an agent is notice to his principal, and such notice is not constructive but actual.

The same was held in *United States* v. *Clark*, 200 U. S., 601. So far as it concerns the defense of *bona fide* purchase, the case at bar finds its antithesis in the Clark case. Clark dealt with one Cobban, who was alleged to have made prior agreements with entrymen under the timber and stone act. The relation between Cobban and Clark was shown to have been that of vendor and vendee. Clark paid Cobban the market price of the lands. The court held that the Government's claim that Cobban was Clark's agent was not sustained, and that Clark had neither actual nor constructive notice.

The fact is, the court decided the Detroit case upon general principles of law and without giving any extraordinary effect to the saving to *bona fide* purchasers in the timber and stone act. That provision

seems not to have been invoked by the defendants. It must be concluded that the timber and stone act is merely declaratory of the common law, because, unlike the *Winona* and *Southern Pacific cases*, there was no peculiar situation to which the provision might apply. In the *Detroit case* the company purchased before patent, and the Government contended that because the company did not hold the legal title at the time of its purchase it could not be a *bona fide* purchaser. It afterwards acquired the legal title through the issuance of patents, and it was held that by the doctrine of relation the company must be considered to have secured the legal title at the time of its purchase. In the *Clark case* the defendants did plead the saving to *bona fide* purchasers, but there is no suggestion in the case that the provision was intended to have anything more than its common-law meaning.

But if, as here, an agency is established, the rule is *qui facit per alium facit per se.*

THE LINN & LANE TIMBER COMPANY IS NOT A BONA FIDE PURCHASER.

Appellee contends (*a*) that Smith and the company are identical in interest; (*b*) that Smith had knowledge of the fraud or of such facts as put him upon inquiry and as he was president of the company the latter was charged with such knowledge; and (*c*) independently of Smith, the company kept its deeds from the record for the purpose of pleading the statute of limitations, which implies that it had knowledge of the fraud.

(a) *Smith and the company identified.*—It will be remembered that all of the entrymen conveyed to Willd, Willd and wife conveyed to Greacen, Greacen conveyed to Rogers, and Rogers and wife conveyed to Nils O. Werner. It is admitted by Smith that these conveyances were all made for his use and benefit and in trust for him (R., 1377).

The amended bill made the Linn & Lane Timber Company a party, alleging that on September 9, 1908, Smith caused to be filed for record in Linn County two deeds, one purporting to have been executed by Nils O. Werner and wife, dated August 15, 1907, and the other purporting to have been executed by C. A. Smith and wife, dated June 4, 1906, each conveying to the company all of the lands in suit. The bill further alleged that these deeds were made without consideration and with the knowledge of the company of the fraud which had been perpetrated upon the Government, and that the conveyances to the company were made for the corrupt and fraudulent purpose of preventing a recovery. The bill further alleged that the deeds to the company were kept concealed and were not placed of record until September 9, 1908, for the purpose of defrauding the complainant and preventing a recovery.

While the trial court overruled the complainant's contention that the statute of limitations did not commence to run until the discovery of the fraud, it did hold that Smith and the company were identical in interest and that as Smith had been impleaded within six years from the date of the issuance of

patents full relief could be had as against the company. In case No. 159, which is to be heard with this case, there were eight patents which were more than six years old at the time of the service of the process upon Smith, and the trial court therefore refused to enter a decree canceling them. The Circuit Court of Appeals affirmed the ruling of the trial court in the case at bar that Smith and the company were identical in interest, but it went further and overruled the holding of the trial court as to the statute of limitations. Thus the Circuit Court of Appeals affirmed the decree of the trial court, basing its affirmance upon two distinct grounds. (In case No. 159 the trial court was reversed as to the said eight patents.)

As to the identity of Smith and the company the trial court says:

> * * * But the identity of Smith and the Linn & Lane Timber Company and their relation to the title to the property in controversy is such that I do not think the rule should be applied in this case. Smith is the real party in interest and the beneficial owner of the property. The corporation was organized by him as a mere holding concern. He owned all of its capital stock. He and the members of his family composed its board of directors and were the officers of the corporation. In fact, Smith was the corporation and the corporation was Smith. The question of the statute of limitations should be therefore determined by the time the suit was commenced against Smith and the holders of the record title, and

not against the mere holding corporation. If, prior to the commencement of these suits, Smith had conveyed or caused the property to be conveyed to some natural person in trust for him, but had withheld the deeds from record and kept the matter secret until the six years had expired, it would hardly be contended that the action is barred, and no greater effect should be given to the organization of the corporation and the deeds to it. The suit was commenced against Smith when the warning order was issued to him and placed in the hands of the proper officer for service (R., 1415–1416).

* * * It is admitted that it took title charged with whatever infirmities existed in the hands of Smith. It is therefore in no sense a *bona fide* purchaser or entitled to the protection of such, but is a mere holding corporation organized by Smith to suit his convenience and as a holder of the legal title for his use and benefit. Smith is a party to the suit and it was commenced against him within six years from the date of issuance of all the patents except those issued in July, 1902, and I do not think that the defendants, either the corporation or Smith, can, under these circumstances, urge this statute as a bar to these suits, when it appears in the testimony that after the property had been conveyed to the corporation by Smith, the deeds were retained by him and the transfer not made public until after the statute of limitations had run.

> I am aware that the soundness of this conclusion is not free from doubt, but I believe it to be in accordance with equity, justice, and sound reason (R., 1417–1418).

And this is the opinion of the Circuit Court of Appeals on this point:

> * * * He organized the corporation. He owned all of the capital stock; he owned all of the lands. Before the corporation was organized and before the patents issued he knew that the officers of the Government were making investigation of the entries and that there was talk of his indictment by a Federal grand jury. The corporation was organized in Minnesota "as a holding company" of lands in Oregon. Up to the time when the deeds were recorded, September 9, 1908, the corporation had never done any business, had never taken possession of the lands or exercised any act of ownership thereof, and there was nothing of record in any State or county office in Oregon to indicate that the corporation possessed any property in the State or had ever transacted any business therein. There can be no doubt that one at least of the purposes for which it was formed was to conceal fraudulently therein the titles to the lands which are the subject of this suit, and to keep the titles so concealed until the time when the statute of limitations should bar the anticipated suit of the Government to set aside the patents. This is shown by the fact that the possession of the deeds which apparently were executed on June 4, 1906, May 28, 1907, and August 17,

> 1907, was retained by Smith, and that he withheld the deeds from record until three and a half months after the commencement of the suit, and by the further fact that up to the date of recording the deeds the taxes on the lands were assessed against and were paid by the grantors and not by the grantee, the corporation (R., 1454).

It will be remembered that in January, 1905, Francis J. Heney and William J. Burns were conducting a vigorous investigation of land frauds in Oregon. Among the matters investigated was the fraud which is the subject of this suit. There was talk of an indictment against Smith (R., 1379). On May 23, 1906, Smith incorporated the Linn & Lane Timber Company under the laws of Minnesota. The certificate of incorporation shows that the incorporators were Charles A. Smith, Johanna A. Smith (Smith's wife), and John Lind. The copy of the certificate of incorporation (R., 952) is attested by Vernon A. Smith (son) as secretary, who was at that time 17 years of age (R., 1272). Nann A. Smith was the treasurer (R., 961). The company was capitalized at $100,000, divided into 1,000 shares of $100 par value each.

On June 9, 1906, there was filed with the secretary of state of the State of Oregon a declaration of purpose by the Linn & Lane Timber Company to engage in business in the State of Oregon, and Kribs was appointed attorney in fact and agent for the company in that State.

The deeds which were recorded on September 9, 1908, purport to have been made by Smith and wife to the company on June 4, 1906 (R., 938), and by Werner and wife on August 15, 1907 (R., 945). There is some testimony in the record which tends to show that the deed made by Smith and wife, although dated June 4, 1906, was actually executed but a short time after the commencement of suit, but it is not entirely satisfactory. But whether the deed was antedated or not, the result is the same.

The taxes on these lands, down to the time of suit, were not paid by the Linn & Lane Timber Company. The county records show they were paid by Werner (R., 637).

At the first meeting of the company, June 9, 1906, a resolution was passed to accept from Smith three deeds in payment of 998 shares of capital stock. One deed is U. S. Exhibit 155 (R., 925), which is the deed of June 4, 1906, conveying 41,967 acres in Linn County, including the acreage in suit; another is defendants' Exhibit "C" (R., 1384), for 7,440 acres in Douglas County, Oregon; and defendants' Exhibit "D" (R., 1388), for 3,371 acres in Lane County, Oregon. Each of the other two directors received one share of stock.

It is admitted in the appellants' brief (p. 98) that at the time the original bill was filed, May 25, 1908, the officers of the company were as follows: President, Charles A. Smith; vice president, Johanna A. Smith; secretary, Vernon A. Smith; treasurer, Nann A.

Smith. The first three were directors. The stockholdings at that time are admitted to have been as follows:

	Shares.
Charles A. Smith	983
Johanna A. Smith	1
Vernon A. Smith	1
Charles J. Johnson	15
	1,000

Of the 983 shares held by Smith, 300 were pledged to the Swedish-American National Bank to secure Smith's indebtedness to the bank and 10 were pledged to C. J. Swanson as security for Smith's indebtedness to him. The shares held on pledge were transferred on the books of the company to the pledgees as security for their respective claims.

Appellants' brief also admits that at the time the amended bill was filed making the Linn & Lane Timber Company a party, November 16, 1908, the officers of the company were as follows: President, B. F. Nelson; vice president, Charles A. Smith; secretary and treasurer, C. C. Wyman. These parties were all directors. The stock holdings at that time were as follows:

	Shares.
Charles A. Smith	983
Charles J. Johnson	15
B. F. Nelson, as trustee for the bank	1
C. C. Wyman, as trustee for the bank	1
	1,000

Of the 983 shares held by Smith, 508 were pledged to the bank and 10 to C. J. Swanson as security for Smith's indebtednesses. The 15 shares owned by

Charles J. Johnson were also pledged to the same bank as security for Smith's indebtedness.

The Circuit Court of Appeals found that the deeds which Werner and Smith made to the company never passed to the secretary or any other officer of the corporation. They were turned over to Charles L. Trabert, who was the secretary of the C. A. Smith Lumber Company, another of Smith's corporations, and who seems to have been Smith's confidential assistant. Trabert testifies that from the time of their execution the deeds were in his possession or kept by him with the articles of incorporation of the Linn & Lane Timber Company until they were recorded on September 9, 1908.

As said by the Circuit Court of Appeals, the first business ever transacted by the Linn & Lane Timber Company in Minnesota, in Oregon, or elsewhere was the recordation of these deeds on September 9, 1908. No one had ever exercised an act of ownership over these lands in the name of the company.

Smith claims that the title was passed through Willd, Greacen, Rogers, and Werner because he thought that if he took title it might have the effect of raising land prices in that vicinity. It is sufficient to say that one mesne conveyance would have served this purpose as well as several.

It is not surprising that both courts below, in the light of the foregoing facts, held that the statute of limitations should be considered with reference to the time the suit was commenced against Smith and not against the company. The corporation was a mere

holding concern for certain of Smith's interests—was but another name for himself. The officers were mere puppets, and the stockholdings, aside from the 15 shares held by Charles J. Johnson, were only such as were necessary to maintain corporate integrity.

The minutes of the board meeting of June 8, 1907, show that Smith advanced the money to pay the taxes on the lands of the company (R., 970). In appellants' brief it is said that the company had to sell land or borrow money with which to pay these taxes. It is not explained why the company did not use its assets as security for the loan. The fact is, Smith dominated the company absolutely and was its owner. Not a move was made by it or any of its officers unless directed by him.

On cross-examination he stated that the reason why he kept the deeds to the company from record was that he did not consider it advisable to have the lands grouped in one concern on account of the effect it would have on land values. Another reason given by him is that he has found when large quantities of land are so handled, it seems to have a material effect upon taxes, especially if the individual or concern is a nonresident. Trabert's testimony on this point on cross-examination is as follows (R., 1282, 1283):

> Q. Well, what have you to say now as to the concealment, when you already had a deed on record showing that C. A. Smith himself owned that land?

A. We only owned a portion. Naturally the more land a man owned the more they would consider he would want to buy, and the higher the price would be. This was only a portion of the land.

Q. Yes; it was only a portion of it, but it showed that he was a buyer in the district; that he was in there, and it would raise the price just as much as if he had 10,000 acres, wouldn't it?

A. No, sir. It depends on the buyer.

Q. Well, it shows that he was the buyer?

A. As I say, it was only scattering purchases, and would not raise the price. We have made investments of just a few thousand acres in different districts out there, and it had no effect on the price at all. It was known that we were not going in there heavily for a manufacturing proposition; but if it became known that we were gradually getting the lands from time to time in a district for a manufacturing proposition, the price would immediately soar, and it would be prohibitory.

Q. Well, didn't it appear that part of the lands in one of the cases, No. 3318, as well as those in No. 3319, had gone to Mr. Smith, which would show that he was in there?

A. Some of them; yes.

Q. You knew at that time, Mr. Trabert, in 1906, that practically all of the lands that were available in that district had been secured by you people; you had been buying in there for six years at that time, hadn't you?

A. Approximately that. About five years.

Q. Well, it was a little over six, wasn't it?

A. I don't recall just at the present moment when the first lands were bought there.

In other words, Trabert admits that Smith for six years past had been buying lands in that vicinity, evidently with no fear that his position as a large timber operator would have the effect of raising prices or tax assessments.

Much space in appellants' brief is devoted to the contention that the company was lawfully organized under the statutes of Minnesota. In form the corporation was possibly duly and legally organized, but appellee contends that this incorporation was for the purpose of taking over Smith's interest in these lands to the end that it might be made to appear that the company was a *bona fide* purchaser, and to the further end that its title might be concealed until after six years from the dates of the patents in order to plead the statute of limitation.

Many authorities are also cited on appellants' brief to the effect that a corporation is a legal entity, separate and apart from its stockholders. Appellee admits this principle. But it is equally true that the modern tendency of the law is to look beyond the corporate form to the individuals behind it, particularly where the corporation appears to have been organized for ulterior purposes. The elaborate opinion of the Circuit Court of Appeals in the case at bar leaves but little to be said on this point. The authorities there cited are as follows: 20 Cyc., 446; *McAlpine* v. *Hedges*, 21 Fed., 689; *McCaskill Co.* v. *United States*, 216 U. S., 504; *Cook on Corporations*, §§ 663,

664; *In re Rieger*, etc., 157 Fed., 609; *United States* v. *Milwaukee Transit Co.*, 142 Fed., 247; *First National Bank* v. *Trebein Co.*, 59 Ohio St., 316; *State* v. *Standard Oil Co.*, 49 Ohio St., 137; *Johnson* v. *Smith*, 2 Burr., 962; *Morawetz on Corporations*, § 227.

See also *Hoffman Coal Co.* v. *Cumberland Coal Co.*, 16 Md., 456; *National Conduit Mfg. Co.* v. *Conn. Paper Mfg. Co.*, 73 Fed., 491; *Cal. Con. Mining Co.* v. *Manley*, 81 Pac., 50; *Lea* v. *Iron Belt Co.*, 147 Ala., 421; *Huron*, etc., v. *Kittleson*, 4 S. D., 520.

Particularly do the courts scrutinize the interests back of the corporation when the stock, or a large majority of it, is held by one person. In *United States* v. *Lee Wilson & Co.*, 214 Fed., 630, the court held that the company had knowledge of a defective title to realty because of knowledge on the part of Wilson, who owned practically all of the stock.

McCaskill Co. v. *United States*, *supra*, is strikingly like the case at bar. That was a suit by the United States to cancel a homestead patent which had been obtained by fraud on the part of the entryman. The land was conveyed to J. J. McCaskill & Co., a copartnership, composed of J. J. McCaskill and E. L. McCaskill. These parties afterwards incorporated under the name of The J. J. McCaskill Co. One of the former partners became the president and Robert E. L. McCaskill became the secretary. The company claimed to be a *bona fide* purchaser. Mr. Justice McKenna, for the court, said:

> Undoubtedly a corporation is, in law, a person or entity entirely distinct from its stock-

holders and officers. It may have interest distinct from theirs. Their interests, it may be conceived, may be adverse to its interest, and hence has arisen against the presumption that their knowledge is its knowledge, the counter presumption that in transactions with it when their interest is adverse their knowledge will not be attributed to it. But while this presumption should be enforced to protect the corporation it should not be carried so far as to enable the corporation to become a means of fraud or a means to evade its responsibilities. A growing tendency is therefore exhibited in the courts to look beyond the corporate form to the purpose of it and to the officers who are identified with that purpose. Illustrations are given of this in Cook on Corporations, secs. 663, 664, and 727. The principle was enforced in this court in *Simmons Creek Coal Company* v. *Doran*, 142 U. S., 417. In that case a corporation claimed title to land through a deed of its corporators, one of whom became its president. Of the effect of this the court said: "Associated together to carry forward a common enterprise, the knowledge or actual notice of all these corporators, and the president was the knowledge or notice of the company, and if constructive notice bound them it bound the company."

The case at bar is within the principle. The bill alleges that J. J. McCaskill and Robert E. L. McCaskill were copartners and engaged in the manufacture of lumber at Freeport, Fla. They incorporated this business, it is alleged, under the laws of Florida, "by the

> corporate name of J. J. McCaskill Company, with the said J. J. McCaskill as president and the said Robert E. L. McCaskill as secretary, owning a large majority of the stock of said corporation, with the entire management and control of the business and affairs of said corporation." There is no denial of this allegation. The interest of the corporators and the corporation thus shown to be identical, not adverse, we think the ruling in *Simmons Creek Coal Company* v. *Doran* is applicable (pp. 514, 515).

The bringing in of new parties is generally so far equivalent to a new cause of action that such new parties may rely upon the statute of limitation as a defense even though the suit was originally brought before the bar arose. But the rule should not be applied here because of the identity of interest between Smith and the company. The bringing in of new parties does not always present a new cause of action and in such case the amendment is not barred by limitation; Wood on Limitations, sec. 294, note (*a*).

(b) *Notice to Smith notice to company.*—There can be but little doubt that Smith knew of the fraud; certainly the evidence amply justifies the belief that he was put upon inquiry, if, indeed, he did not know that his money was being used to secure the fraudulent affidavits upon which the patents were issued. But more than this, there is, as has been shown, a presumption that Kribs communicated to his principal all of the facts of which the former had knowledge. This is not a rebuttable presumption of fact; it is a conclusive legal presumption.

(*Simmons Creek Coal Company* v. *Doran*, 142 U. S., 417, 439.) As he was president of the company at the time the conveyances were made to it, the company is affected by notice. (Wade on Notice, 2d Ed., par. 683–b; *United States* v. *Lee Wilson & Co.*, *McCaskill Company* v. *United States*, *Simmons Creek Coal Company* v. *Doran*, *supra.*) Even if the notice to Smith were only constructive, the company would be bound; (*Simmons Creek Coal Company* v. *Doran*, *supra*). As said in *Lake Shore, etc., Ry. Co.* v. *Prentice* (147 U. S., 101, 114):

> The president and general manager, or, in his absence, the vice president in his place, actually wielding the whole executive power of the corporation, may well be treated as so far representing the corporation and identified with it that any wanton, malicious, or oppressive intent of his, in doing wrongful. acts in behalf of the corporation to the injury of others, may be treated as the intent of the corporation itself.

(c) *Concealment of deeds implies knowledge in company.*—Independently of Smith, the company is plainly chargeable with the concealment of its title deeds At the time Smith and others filed their pleas in abatement, averring that all right, title, and interest in and to the lands had passed to the company, six years from the dates of the patents had elapsed. If the suit had been permitted to go to decree without any assertion of title by the company, that title would have become impaired by a decree vacating the patents; so that the company, having concealed

the deeds for a time—sufficiently long in its belief to raise the bar of the statute—thought itself perfectly secure in making known its title and recording the deeds.

In *McAlpine* v. *Hedges, supra*, it is said:

> It is claimed that the bill shows no affirmative act of concealment after the execution of the deeds; and in some of the decided cases expressions have been used to the effect that affirmative subsequent acts of concealment are necessary to stop the running of the statute; but, when considered with reference to the facts upon which these decisions were made, they do not go to the full extent claimed for them. When a fraud is of a secret nature, and in the particular case has been conceived and executed upon such a plan as to secure continued secrecy, without further acts of concealment except silence, the statute ought not to run until there has been a discovery. In such a case it may well be said to have been a continuous concealment. The making of a fraudulent deed, and the keeping of it off the record by all the persons concerned in and cognizant of the transaction, combined with their purposed silence upon the subject, it certainly will not do to say is not a concealment, for which relief may be granted. See *Meader* v. *Norton*, 11 Wall. 442; *Carr* v. *Hilton*, 1 Curt. C. C. 238; *Vane* v. *Vane*, L. R. 8 Ch. 383; *Rolfe* v. *Gregory*, 4 De G., J. & S. 576; *Hovenden* v. *Annesley*, 2 Schoales & L. 634; *Buckner* v. *Calcote*, 28 Miss. 568. Cited to the contrary: *Wynne* v. *Cornelison*, 52 Ind. 319;

Jackson v. *Buchanan*, 59 Ind. 390; *Musselman* v. *Kent*, 33 Ind. 458; *Pilcher* v. *Flinn*, 30 Ind. 202; *Boyd* v. *Boyd*, 27 Ind. 429.

See also 20 Cyc., 446 and cases cited.

If the company is not a bona fide purchaser, the fact that a small portion of the stock has been sold or pledged can not, of course, change its situation in that behalf.

STATUTE OF LIMITATIONS.

The patents were dated August 12, 1902. The amended bill asking that the company be made a party was filed November 16, 1908, and service was had November 18, 1908; hence more than six years from the date of the patents had expired before the Government took any steps to implead the company. But the discovery of the deeds was not made until September 9, 1908, when they were first recorded.

The courts below have found that at least one purpose of Smith and the company in withholding the deeds from record was to obtain the cover of the statute fraudulently through the concealment. The evidence abundantly justifies the finding. Keeping a deed from the record in that way constitutes such a fraudulent concealment as will stay the running of the statute under the rule which we are about to discuss.

McAlpine v. *Hedges*, 21 Fed., 689;
Rosenthal v. *Walker*, 111 U. S., 185.

Furthermore, the original fraud was not uncovered until January, 1905, and the limitation did not begin to run for any purpose until then. Although the

Government began its investigation in 1900, the machinations of the conspirators in securing false affidavits, kept it in ignorance of the truth until the entrymen were called before Heney and Burns and the grand jury, when, free from domination and corruption, they admitted the facts upon which the suit was afterwards brought.

Even if there had been no new affirmative acts of fraud, the original fraud was such as to conceal itself, and the statute would have been tolled until the discovery.

Quimby v. *Blackey*, 63 N. H., 77.
Jackson v. *Jackson*, 149 Ind., 238.
Cook v. *Sherman*, 20 Fed., 167.
McAlpine v. *Hedges*, *supra*.

It appears that from the time the fraud was first suggested in 1900, down to the issuance of the patents, the Government carried on a persistent and diligent investigation. It can not be fairly urged that it slept on its rights. In this connection appellants cite the case of *Wood* v. *Carpenter*, 101 U. S., 135. The excerpts from the opinion in that case quoted in the brief of the appellants and in that of Messrs. Blair and Lewers should be read in the light of the fact that in that case the plaintiff did not make the slightest inquiry after the discovery of facts which might, with proper diligence, have led to the discovery of the fraud. It is only necessary to add from the opinion of the court the following (pp. 139–140):

> It will be observed also that there is no averment that during the long period over

> which the transactions referred to extended, the plaintiff ever made or caused to be made the slightest inquiry in relation to either of them. The judgments confessed were of record, and he knew it. It could not have been difficult to ascertain, if the facts were so, that they were shams. The conveyances to Alvin and Keller were also on record in the proper offices. If they were in trust for the defendant, as alleged, proper diligence could not have failed to find a clew in every case that would have led to evidence not to be resisted. With the strongest motives to action, the plaintiff was supine. If underlying frauds existed, as he alleges, he did nothing to unearth them. It was his duty to make the effort.

Plainly, it is the time of the discovery of the facts constituting the fraud, not those which merely create the suspicion, from which the statute begins to run.

I.

THE GENERAL RULE, ACCEPTED AND APPLIED BY THIS COURT IN BAILEY v. GLOVER, 21 WALL., 342, AND IN SUBSEQUENT DECISIONS, DECLARES THAT A STATUTE OF LIMITATIONS, HOWEVER SWEEPING AND POSITIVE ITS TERMS, SHALL NOT BE HELD TO RUN AGAINST A CAUSE OF ACTION CONCEALED BY FRAUD, OR ARISING OUT OF A FRAUD WHICH CONCEALS ITSELF, UNTIL THE FRAUD HAS BEEN, OR AT LEAST UNTIL IN THE EXERCISE OF REASONABLE DILIGENCE IT SHOULD HAVE BEEN, DISCOVERED BY THE PARTY AFFECTED.

Bailey v. *Glover*, 21 Wall., 342, is the leading case, in this country, cited and discussed throughout the later reports. It was a bankruptcy case and involved

a statute of limitations contained in section 2 of the bankruptcy act (14 Stat., 518):

> But no suit, *at law or in equity, shall in any case* be maintainable by or against such assignee (in bankruptcy), or by or against any person claiming an adverse interest, touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years from the time the cause of action accrued for or against such assignee.

Notwithstanding the apparently imperative command of this statute that no suit at law or in equity *shall in any case* be maintainable unless the same shall be brought within two years from the time the cause of action accrued, this court held that a suit brought more than three years after the appointment of the assignee could be maintained, because Glover, the bankrupt, had fraudulently conveyed real property. Bailey, the assignee, brought suit to set aside these conveyances, alleging that they were in fraud of Glover's creditors and that the fraudulent conveyances had been kept concealed until after the running of the statute. The opinion was delivered by Mr. Justice Miller, who said:

> This is a statute of limitation. It is precisely like other statutes of limitation and applies to all judicial contests between the assignee and other persons touching the property or rights of property of the bankrupt transferable to or vested in the assignee, where the interests are adverse and have so existed

> for more than two years from the time when the cause of action accrued, for or against the assignee. Such is almost the language in which the provision is expressed in section 5057 of the Revised Statutes (p. 346).

The court then observed that there was a special reason for the enactment of the statute of limitation in question, namely, to insure the speedy winding up of bankrupt estates, and to set an early period beyond which the bankrupt and his assignee and creditors should not be harassed by litigation.

The opinion then proceeds:

> But the appellant relies in this court upon another proposition which has been very often applied by the courts under proper circumstances, in mitigation of the strict letter of general statutes of limitation, namely, that when the object of the suit is to obtain relief against a fraud, the bar of the statute does not commence to run until the fraud is discovered, or becomes known to the party injured by it.
>
> This proposition has been incorporated in different forms in the statutes of many of the States, and presented to the courts under several aspects where there were no such statutes. And while there is unanimity in regard to some of these aspects there is not in regard to others.
>
> In suits in equity where relief is sought on the ground of fraud, the authorities are without conflict in support of the doctrine that where the ignorance of the fraud has been produced by affirmative acts of the guilty party

in concealing the facts from the other, the statute will not bar relief provided suit is brought within proper time after discovery of the fraud.

We also think that in suits in equity the decided weight of authority is in favor of the proposition that where the party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered, though there be no special circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party.

On the question as it arises in actions at law there is in this country a very decided conflict of authority. Many of the courts hold that the rule is sustained in courts of equity only on the ground that these courts are not bound by the mere force of the statute as courts of common law are, but only as they have adopted its principle as expressing their own rule of applying the doctrine of laches in analogous cases. They, therefore, make concealed fraud an exception on purely equitable principles.

On the other hand, the English courts and the courts of Connecticut, Massachusetts, Pennsylvania, and others of great respectability hold that the doctrine is equally applicable to cases at law.

As the case before us is a suit in equity, and as the bill contains a distinct allegation that the defendants kept secret and concealed

from the parties interested the fraud which is sought to be redressed, we might rest this doctrine on what we have said is the undisputed doctrine of the courts of equity, but for the peculiar language of the statute we are considering. We can not say in regard to this act of limitations that courts of equity are not bound by its terms, for its very words are that "no suit *at law or in equity* shall in any case be maintained * * * unless brought within two years," etc. It is quite clear that this statute must be held to apply equally by its own force to courts of equity and to courts of law, and if there be an exception to the universality of its language it must be one which applies under the same state of facts to suits at law as well as to suits in equity.

But we are of opinion, as already stated, that the weight of judicial authority, both in this country and in England, is in favor of the application of the rule to suits at law as well as in equity. And we are also of opinion that this is founded in a sound and philosophical view of the principles of the statutes of limitation. They were enacted to prevent frauds; to prevent parties from asserting rights after the lapse of time had destroyed or impaired the evidence which would show that such rights never existed, or had been satisfied, transferred, or extinguished, if they ever did exist. To hold that by concealing a fraud, or by committing a fraud in a manner that it concealed itself until such time as the party committing the fraud could plead

the statute of limitations to protect it, is to make the law which was designed to prevent fraud the means by which it is made successful and secure. And we see no reason why this principle should not be as applicable to suits tried on the common law side of the court's calendar as to those on the equity side.

While we might follow the construction of the State courts in this matter, where those statutes governed the case, in construing this statute of limitation passed by the Congress of the United States as part of the law of bankruptcy, we hold that when there has been no negligence or laches on the part of a plaintiff in coming to the knowledge of the fraud which is the foundation of the suit, and when the fraud has been concealed, or is of such a character as to conceal itself, the statute does not begin to run until the fraud is discovered by, or becomes known to, the party suing, or those in privity with him (p. 347 et seq.).

As was said in *Rosenthal* v. *Walker*, 111 U. S., 185, 191:

> The case of *Bailey* v. *Glover* has often been cited by this court but never doubted or qualified.

See

Wood v. *Bailey*, 21 Wall., 640;
Wiswall v. *Campbell*, 93 U. S., 347;
Gifford v. *Helms*, 98 U. S., 248;
Upton v. *McLaughlin*, 105 U. S., 640, 642;
Kirby v. *Lake Shore R. R. Co.*, 120 U. S., 130.

Of the multitude of other opinions which have declared the rule, we will call attention to a few only.

Federal cases:

Sherwood v. *Sutton*, 5 Mason, 143 (an exceptionally important opinion by Judge Story, in an action at law);
Carr v. *Hilton*, 1 Curtis, 390;
Mitchell v. *Thompson*, 1 McLean, 96, 103;
Tyler v. *Angevine*, Fed. Cas. No. 14306;
Johnston v. *Roe*, 1 Fed., 692, 696;
Duff v. *First Nat. Bank*, 13 Fed., 65;
Bartles v. *Gibson*, 17 Fed., 293;
Cook v. *Sherman*, 20 Fed., 167, 173;
McAlpine v. *Hedges*, 21 Fed., 689;
Farrar v. *Bernheim*, 75 Fed., 136;
Lant v. *Manley*, Ib., 627;

See also:

Moore v. *Green*, 19 How., 69, 72;
Hanger v. *Abbott*, 6 Wall., 532;
Meader v. *Norton*, 11 Wall., 442, 458;
Braun v. *Sauerwein*, 10 Wall., 218, 223;
Amy v. *Watertown* (No. 2), 130 U. S., 325, 326.

In *Lant* v. *Manley*, *supra*—a suit brought to annul a fraudulent conveyance which had been outstanding 21 years—it was said by Judge Taft (p. 635):

> *Rosenthal* v. *Walker*, 111 U. S., 185; *Traer* v. *Clews*, 115 U. S., 528; *Kirby* v. *Railroad Company*, 120 U. S., 130; and *Bailey* v. *Glover*, 21 Wall., 342, are all cases laying down the principle that where a party injured by the fraud remains in ignorance of it without any fault or want of diligence on his part, the bar of the statute does not begin to run until the fraud is discovered though there be no special

> circumstances or efforts on the part of the party committing the fraud to conceal it from the knowledge of the other party. The strictest rule on the subject of laches which the authorities will justify is that, before delay in filing a bill to rectify fraud can be excused, it must appear either that the fraud was actively concealed, or that it was of such character as to conceal itself, and that the complainant has been diligent in his investigations.

United States v. *Exploration Co.*, 203 Fed., 387—recently decided by the Circuit Court of Appeals for the Eighth Circuit—is exactly parallel to the present case. The bill charged a fraudulent scheme to obtain title to coal land in excess of the quantity allowed by law through a scheme, familiar to this court, which is known as the "dummy entryman" method. As in the case at bar, the titles were carried from the entrymen through a number of mesne grantees in trust and finally into the company by secret conveyances which were purposely withheld from the record until after the patents were six years old. The Government alleged in its bill, as here, that it had no knowledge of these conveyances except within six years prior to the time the bill was filed. The court held the rule, as laid down in *Bailey* v. *Glover*, applicable to the act of March 3, 1891. The same ruling was made in a similar case argued at the same time. *United States* v. *American Smelting & Refining Co.*, 203 Fed., 393.

State cases:

Snodgrass v. *Branch Bank of Decatur*, 25 Ala., 161;
McKneely v. *Terry*, 61 Ark., 527;
Currey v. *Allen*, 34 Cal., 254;
Sparks v. *Farmers' Bank*, 3 Del. Ch., 275;
Stocks v. *Van Leonard*, 8 Ga., 511, 515;
Greenman v. *Greenman*, 107 Ill., 404;
Donnelly v. *Donnelly*, 8 B. Mon. (Ky.), 113, 119;
Wear v. *Skinner*, 46 Md., 257;
Stebbins v. *Patterson*, 108 Mich., 537;
Lewis v. *Welch*, 47 Minn., 193;
Edwards v. *Gibbs*, 39 Miss., 166;
Blake v. *Chambers*, 4 Neb., 90;
Douglas v. *Elkins*, 28 N. H., 26;
Lincoln v. *Judd*, 49 N. J. Eq., 387;
Sears v. *Shafer*, 6 N. Y., 268;
Longworth v. *Hunt*, 11 Ohio St., 194;
Peck v. *Bank of America*, 16 R. I., 710;
Garvin v. *Garvin*, 40 S. C., 435;
Haywood v. *Marsh*, 6 Yerg. (Tenn.), 69;
McDonald v. *McGuire*, 8 Texas, 361;
Wickham v. *Sprague*, 18 Wash., 466;
Quimby v. *Blackey*, 63 N. H., 77;
Jackson v. *Jackson*, 149 Ind., 238, 245;
Case of Deake, appellant, 80 Me., 50, 55, 56.

Some few of the above cases involved statutes (*declaratory of the general rule*) providing that in case of concealment by fraud the time shall not begin to run, or as frequently expressed in modern statutes, the "cause of action shall not be deemed to have accrued," until discovery of the fraud. These cases, however, discuss and concede the general principle.

Snodgrass v. *Branch Bank of Decatur*, 25 Ala., 161, decided in 1854, was a proceeding to try title to certain slaves. The Supreme Court of Alabama reviews the leading English and American authorities to that time; finds that in all cases in equity where the court acts "in obedience or analogy to the statute, if the complainant uses reasonable diligence to discover the fraud and files his bill within the time prescribed by the statute after such discovery, it is sufficient"; that in England, and also by the weight of authority in this country, fraud estops the statute in actions at law. The reasons for the exception are thus clearly stated (p. 173):

> We agree that the statute is one of repose, and would apply it to every case of adverse possession, except where the defendant, *by fraud*, has prevented the plaintiff from obtaining a knowledge of the facts upon which his action depends; and in such a case the party should, under the influence of the statute, be required to bring his suit within the period prescribed after the discovery; but the defendant should not be allowed to claim any benefit by fraud upon the statute. The act, it is to be observed, was passed for the protection of the defendant. By his fraudulent conduct he prevents the plaintiff from complying with its terms—from bringing his suit within the time—and then seeks to take advantage of an omission which his own fraud has caused. A construction which would produce this result is at variance with the established rules of law, which never allows an advantage to

be gained in this way; and, if countenanced by the courts, must necessarily inure to the encouragement of fraud. *Such, we think, could not have been the intention of the legislature,* and such is not the rule which a just and enlightened equity, professing to follow the law, holds.

Similar statements run through many of the opinions. We give these merely as a fair sample.

English cases:

Cotterell v. *Purchase*, Forrester, 61;

Alden v. *Gregory*, 2 Eden, *280;

Booth v. *Warrington*, 4 Brown's Par. Cas., 163;

South-Sea Co. v. *Wymondsell*, 3 Wms. Ch. Rep., 143;

Hovenden v. *Lord Annesley*, 2 Sch. & L., 607;

Bree v. *Holbech*, Douglas, 656;

Granger v. *George*, 5 B. & C., 149.

A learned review of the early English cases, both at law and in equity, will be found in the opinion by Mr. Justice Story in *Sherwood* v. *Sutton*, 5 Mason, 143. Attention is also invited to the following textbooks:

Angell on Limitations (6th ed.), §§ 30, 183, 186, 470;

13 Enc. Pl. and Pr., p. 243;

19th Am. and Eng. Enc. (2d ed.), pp. 242, 243, 244, 245, 288.

II.

THE RULE DOES NOT DEPEND UPON THE INTERPRETATION OF PARTICULAR TERMS EMPLOYED BY THE LEGISLATURE. IT AFFORDS A CONSPICUOUS EXEMPLIFICATION OF THE PRINCIPLE OF CONSTRUCTION WHICH WITHDRAWS FROM THE LETTER THAT WHICH IS PLAINLY NOT WITHIN THE SPIRIT OF A STATUTE. Holy Trinity Church v. United States, 143 U. S., 457.

Reference to the quotation we have given from *Bailey* v. *Glover* would alone suffice to support this proposition, but in view of certain insistent contentions in the opposing briefs we will elaborate the argument somewhat.

Unless it says so in words, it is not to be believed that a legislature, by imposing a time limit on actions generally, could have intended to destroy the rights of a party who is rendered powerless to assert them by the fraud of the very one who seeks the protection of the bar. Such a purpose would be harsh and unconscionable in the extreme; not to be imputed, especially by a court of conscience, to a class of statutes one object of which is to *prevent fraud.*

> "Concealment of fraud," said this court in *Amy* v. *Watertown*, 130 U. S., 320, 325, "prevents a party from knowing that he has been injured and has a cause of action. He can not take any steps to obtain redress."

The court there placed this exception upon the same basis as another class of cases "which is excluded from the operation of the statute by the law itself"; namely, a class which—

> Embraces those cases in which no action can be brought at all, either for want of parties

> capable of suing or because the law prohibits the bringing of an action. In such cases the general law operates as a qualification or tacit condition of the particular statute. Thus, ir a man dies after commencing an action, and it abates by his death, and the limitation of time for bringing another action expires before the appointment of an executor or administrator, the courts have held that as there is no person to bring suit, the statute is suspended for a reasonable period, in order to give an opportunity to those interested to have the proper representative appointed. Blanshard on Limitations, pp. 104–112; Wood on Limitations, 11, n. 4. So where a citizen of one country has a cause of action against a person who resides in another country at war with his own, the law of nations forbids any intercourse between them, and suspends all suits and actions by the one against the other; and, therefore, the time, during which the right to sue is thus suspended, is not reckoned as any part of the time given by the statute of limitations for bringing an action. *Hanger* v. *Abbott*, 6 Wall., 532; *The Protector*, 9 Wall., 687; Wood on Limitations, 9, 10.

In *Braun* v. *Sauerwein*, 10 Wall., 221, 222, this court said:

> In *Hanger* v. *Abbott*, 6 Wall., 532, it was ruled, after grave consideration, that the time during which the courts of the recently rebellious States were closed to the citizens of other States is, in suits brought by such citizens, to be excluded from the computation of the time fixed by statutes of limitation, within which

only suits may be brought, and this, though the statutes contain no such exception. In other words, it was held that the statutes of limitations of the insurrectionary States were suspended while the courts in those States were closed by the war. Similar decisions have been made in the State courts. They all rest on the ground that the creditor has been disabled to sue, by a superior power, without any default of his own, and, therefore, that none of the reasons which induced the enactment of the statutes apply to his case; that unless the statutes cease to run during the continuance of the supervening disability, he is deprived of a portion of the time within which the law contemplated he might sue.

It seems, therefore, to be established that the running of a statute of limitation may be suspended by causes not mentioned in the statute itself.

The exception we are now considering had its origin in the abhorrence which courts of equity have always felt for fraud in all its forms. The early statutes of limitation were not applicable in terms to these courts. But in cases of concurrent jurisdiction they were deemed binding, and in other cases the statutory limitations were applied by analogy as measures of laches. When, however, it came to cases in which causes of action had been concealed by fraud, equity saw at once that to apply the statutory measure according to its strict letter would be an unconscionable thing, shocking to the moral and judicial sense. It would enable the wrongdoer to

76820—15——8

estop justice by his own fraud. It would be converting that which was intended to prevent fraud into a legislative and judicial instrument for the consummation of fraud, and it would be making the legislature and the courts, including the high court of conscience, *particeps criminis* in the crowning of chicanery and deceit.

> "No length of time," said Lord Ersksine in *Cotterell* v. *Purchase*, Forrester, 63, "will bar a fraud."

In *Alden* v. *Gregory*, 2 Eden, *285, Lord Northington said:

> The next question is, in effect, whether delay will purge a fraud. *Never, while I sit here.* Every delay arising from it adds to the injustice, and multiplies the oppression.

In *Prevost* v. *Gratz*, 6 Wheat., 481, this court said:

> It is certainly true, that length of time is no bar to a trust clearly established; and in a case where fraud is imputed and proved, *length of time ought not, upon the principle of eternal justice, to be admitted to repel relief.* On the contrary, it would seem that length of time, during which the fraud has been successfully concealed and practiced, is rather an aggravation of the offense, and calls more loudly upon a court of equity to grant ample and decisive relief.

Said Mr. Justice Story in *Sherwood* v. *Sutton*, 5 Mason, p. 154:

> What, then, is the reason upon which this exception has been established? It is that

every statute is to be expounded reasonably, so as to suppress and not to extend the mischiefs which it was designed to cure. The statute of limitations was mainly intended to suppress fraud by preventing fraudulent and unjust claims from starting up at great distances of time, when the evidence might no longer be within the reach of the other party by which they could be repelled. It ought not, then, to be so construed as to become an instrument to encourage fraud, if it admits of any other reasonable interpretation; and cases of fraud, therefore, form an implied exception, to be acted upon by courts of law and equity according to the nature of their respective jurisdictions. Such, it seems to me, is the reason on which the exception is built, and not merely that there is an equity binding upon the conscience of the party which the statute does not reach or control. Nor is this mode of interpretation of statutes new in courts of law. The case under our registration acts concerning real estate, where notice deprives a second grantee of his priority, has been already mentioned; and, as far as I know, the doctrine pervades the courts of law throughout this Union. It certainly is the received doctrine in every State of the first circuit.

Again, p. 155:

Now, if any exception out of the words of the statute is to be created by implication, I can scarcely conceive of one which stands upon better reason than that now insisted on;

for it is in furtherance, and not in evasion, of the legislative intention.

In *First Mass. Turnpike* v. *Field*, 3 Mass., 201, 206 (another action at law), the court said, speaking through Chief Justice Parsons:

> Neither can the statute be considered as *intending* to protect any man in the quiet enjoyment of the fruits of a fraudulent execution of a contract, if the action be commenced within six years after the discovery of the fraud. The delay of bringing the suit is owing to the fraud of the defendant, and the cause of action against him ought not to be considered as having accrued, until the plaintiff could obtain the knowledge that he had a cause of action. If this knowledge is fraudulently concealed from him by the defendant, we should violate a sound rule of law if we permitted the defendant to avail himself of his own fraud. In chancery, where the statute of limitations is pleadable, as well as at law, it is a rule that the statute is no plea to a bill charging a fraud if the bill be filed within six years after the discovery of the fraud. 3 P. Will., 143. We are therefore satisfied that the plaintiff may reply fraud to a plea of the statute of limitations and avoid the plea.

The exception is in no way dependent upon the supposed independence of the chancery courts.

Bailey v. *Glover*, and the cases at law which we have just cited, suffice to answer the contrary suggestion made in opposing briefs.

Furthermore, when exercising concurrent jurisdiction, the chancery court *was* bound by the statute,

as Mr. Justice Story points out clearly in *Sherwood* v. *Sutton*, page 145, when he says:

> But it must be obvious, that where courts of equity deal with legal titles and legal demands, it could never have been the legislative intention, that they should not be bound by the provisions of the statute. It would otherwise happen, that a legal title or demand, utterly extinct at law, would be recognized as subsisting in equity. It was, therefore, very justly said by Lord Redesdale, in *Hovenden* vs. *Lord Annesley* (2 Sch. & Lefr., 607, 630), "that the statute must be taken virtually to include courts of equity, for when the legislature by statute limited proceedings at law in certain cases, and provided no express limitations for proceedings in equity, it must be taken to have contemplated, that equity followed the law; and, therefore, it must be taken to have virtually enacted, in the same cases, a limitation for courts of equity also." With reference to such cases (i. e., of legal titles and demands), the remark of his lordship is emphatically true, that courts of equity do not act merely by *analogy* to the statutes, but in *obedience* to them.

We have not been pointed to a single instance in which this salutary rule of construction has been repudiated by legislative act. On the contrary, the legislatures have adopted for expression what they had all along permitted the courts to derive by implication from their general words. Hence the numerous statutes, very common in the States, which ex-

pressly suspend the bar in cases of concealed fraud. These are not innovations; they are declaratory of a principle long accepted by all as "founded in solid sense" and "a natural limitation upon the language of the statute." *Sherwood* v. *Sutton, supra,* p. 148.

III.

THIS GENERAL RULE IS APPLICABLE TO THE STATUTE OF LIMITATIONS PLEADED BY THE DEFENSE IN THIS CASE.

1. The reasons underlying the rule apply to a suit to annul a patent for fraud. This is established by the decision of this court in United States v. Minor, 114 U. S., 233.

The case cited was decided before the enactment of the statute. In reply to a question whether the bill, having been filed more than seven years after the patent issued, was barred by laches, this court said:

> The seventh question, with regard to laches in bringing the suit, we answer by saying that in the present case there is no such laches shown as will justify the court in dismissing the bill. Waiving for the present the general proposition that time does not run against the government, from the effect of which we see no escape in the short period of seven years and a half, it is pretty clear, on the face of the bill, *that the first discovery of the fraud was made when Spence, on applying for his patent under the homestead law, made it known that he had been residing on, improving, and cultivating a part of the land included in Minor's patent during the time Minor swore he was doing the same thing. Of course, lapse of time, as a*

defense to a suit for relief for these frauds did not begin to run until the fraud was discovered.

2. The statute forms an exception to the general rule that time does not run against the Government. Therefore (and for the reasons upon which that immunity rests) it should not be strictly construed against the Government.

Surely it should not be applied more rigidly to bar the Government's rights than a like statute would be applied to bar the rights of private persons.

The contrary idea, which in varied form pervades the opposing briefs, seems to us a perfect *bouleversement* of certain fundamental notions which have heretofore been accepted without question.

The universal rule is that time does not run against the State. Laches is not imputable to it through its agents, and statutes of limitations do not affect it unless they name it expressly.

The King's innumerable duties, on account of which he is likely to overlook his cause of action, are what has caused the courts from time immemorial to hold it to be a royal prerogative that neither laches nor limitations should be pleadable against him. And "*nullum tempus occurrit Regi*" is just as sacred in this country to-day as ever it was in England. Only in the few instances in which the Government has given its consent and upon its own terms may limitation be pleaded against it. Mr. Angell, in his work on Limitations, says of the prerogative:

> The true reason, it has been thought, however, is the great public policy of preserving

> the public rights, revenues, and property from injury and loss by the negligence of public officers [per Mr. Justice Story, in *U. S.* v. *Hoar*, 2 Mason, 312]. And the prerogative right of the king in relation to acts of limitation in England is, in fact, nothing more than a reservation or exception, introduced for the public benefit, and is equally applicable to all governments. (Par. 36, 6th ed.)

Starting with this fundamental principle—the sovereign immunity from statutes of limitation—it is impossible to perceive why a conceded rule of construction applicable to such statutes when applied to individuals should be laid aside when the Government is concerned. This court has declared that neither laches nor limitations are pleadable against the Government unless Congress has permitted it in clear and unmistakable terms.

In *United States* v. *N. C. & St. L. R. Co.*, 118 U. S., 120, Mr. Justice Gray, at page 125, says:

> It is settled beyond doubt or controversy—upon the foundation of the great principle of public policy, applicable to all government alike, which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided—that the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations, unless Congress has clearly manifested its intention that they should be so bound.

See *United States* v. *Insley*, 130 U. S., 263;
United States v. *Beebe*, 127 U. S., 338.

We here invite attention to what this court has said of the peculiar liability of the Government to be imposed on by fraud in land-office proceedings:

> It is not possible for the officers of the government, except in a few rare instances, to know anything of the truth or falsehood of these statements. In the cases where there is no contesting claimant there is no adversary proceeding whatever. The United States is passive; it opposes no resistance to the establishment of the claim, and makes no issue on the statement of the claimant. *United States* v. *Minor*, 114 U. S., 233, 240.

IV.

RESPONSE TO VARIOUS SUGGESTIONS MADE IN THE OPPOSING BRIEFS.

We believe that not one persuasive reason can be assigned in the case of this statute for departing from the settled rule which had governed the construction of all similar statutes for so many years before its enactment. But as many pages to show the contrary have been printed, by the appellants and the *amici curiae*, we will reply briefly to some of the points thus suggested.

1. Answer to the objection that the rule disobeys the terms of the statute.

(a) *This argument is but a repetition of the argument made in Bailey v. Glover, and which must have been made in every case in which the*

rule was invoked and disputed. It begs the question entirely.

If the innumerable statutes to which the rule has been applied had not suggested a literal conflict there would have been nothing to discuss, and the great mass of opinions which have proclaimed the rule would be absent from the reports. To answer at length what is said on this topic in the other briefs would be a stale and unprofitable task. Without question, the literal tenor of the statute is with the defendants. But so was the statute in *Bailey* v. *Glover*, and so were the statutes in all the other cases.

So was the statute in the case of *Church of the Holy Trinity* v. *United States*, 143 U. S., 457, and in many others in which the strict letter has been made to yield, in avoidance of unconscionable and damaging results which plainly could not have been intended.

(b) *In the absence of any extraneous reason to the contrary, the overwhelming presumption is that Congress intended the general words to be construed and restrained in accordance with the universal rule.*

As said by Mr. Endlich, "Interpretation of Statutes" (par. 369):

> Where terms and modes of expression are employed in a new statute, which, at the time of its enactment, had acquired, by judicial construction, a definite meaning and application in a previous statute on the same subject, or on one analogous to it, they are generally supposed to be used in the same sense, and in the construction of the later act regard should be

had to the known and established interpretation of such terms and modes of expression in the former.

Here is a statute not merely analogous to but substantially the same as those as to which there has been uniform judicial construction from the Statute 21 James I, in 1623, down to the act of March 3, 1891.

(c) *If Congress had not so intended it would have forestalled the possible application of the rule, by definite words.*

The opposing counsel say that the words used are definite. The answer is that words equally definite and sweeping had been repeatedly construed by this court and many others as not applicable literally to cases of fraudulent concealment.

In like manner the word "void," even the words "absolutely void," have come to be interpreted "voidable." When a legislature uses the term "void" it will be held to have meant "voidable" unless it takes the precaution (if such is not its purpose) to show that its intent corresponds with the literal meaning.

A point is made by the appellants (Brief, p. 120) and perhaps in the other briefs, that according to the letter of the act, suit shall "only" be brought within the time fixed. The statute of 21 James I, ch. 16, sec. 3, involved in the early decisions, was even more definite. It provided that the actions mentioned "shall be commenced" within the times limited "and not after," using this latter phrase repeatedly. An-

gell, Lim. (6th ed.), p. 507. Equally express was the statute construed in *Bailey* v. *Glover*.

Emphatic directions of this sort occur in many, possibly in the most, of such statutes, but the courts have never attached to them the slightest significance in applying the exception, and this for the obvious reason that they are directed at the classes of cases which are *not* excepted from the statute.

2. Answer to the objections based upon the circumstance that the statute employs the expression "after the date of the issuance of such patents," instead of the expression "from the time the cause of action accrued." Bailey v. Glover, supra.

(a) *The basis of the doctrine, as we have shown above, is wholly independent of particular terms. It is too deep and fundamental a conception to spring from a frivolous distortion of the term "accrue." It is a tribute of the courts of equity to the legislative mind and to the idea of conscience, upon which equity is founded.*

The attempt to derive this salutary and time-honored rule from a mere play on words is offensive to common sense and a slight upon the intelligence and candor of generations of eminent chancellors and judges.

(b) *In Bailey* v. *Glover, supra, the words "accrue" and "accrued" are not once mentioned in the opinion, except where the statute is recited.*

The peculiar virtue and significance of those terms about which so many pages are now vouchsafed us in the opposing briefs, appear to have escaped entirely the attention of this learned court. The same is true of the other cases in which the philosophic basis of the doctrine is carefully considered.

> (c) *There is no distinction in the application of this principle between statutes which, on their face, run from the "accrual of the cause of action" and those which run from some specified event to occur or a specified date; particularly is this true of the statute at bar.*

In the opinion of the court below (R., 457), Mr. Justice Gilbert said:

> No distinction between the statute of limitations involved in that case (*Bailey* v. *Glover*) and that which is involved in the present case is to be found in the fact that in the former the time is limited from the date when the cause of action accrued.

and in the case of *United States* v. *Exploration Company, Ltd.*, 203 Fed., 387, the Circuit Court of Appeals, reversing the trial court, said:

> There is no reason why the equitable rule in regard to concealed fraud should not be applied where the statute of limitations fixes a date certain, as well as where the statute provides that the limitation period shall run from the accrual of the cause of action; * * *.

A cause of action accrues when it arises or comes into being. The word "accrue" means this in common parlance, as a glance at any dictionary will show,

and it means it especially in the law, where the word is really a term of art.

The accrual of a legal right, dependent on the happening of extraneous events, can be in no sense dependent upon the knowledge of the person to whom it belongs. And this is equally true whether the right be a substantive or an adjective right.

Granger v. *George*, 5 Barn. & Cress., 149, decided by the court of Kings Bench in 1826, was an action on the case in trover based on the conversion of certain boxes containing deeds, etc. The defendant pleaded "that the causes of action in the declaration mentioned did not accrue within six years next before," etc. This plea was sustained by Abbott, C. J., and Bailey, J., who held that *in the absence of fraud* the ignorance of the plaintiff concerning the existence of his cause of action could not affect the running of the statute. The Chief Justice said:

> Upon that point I thought, and I still retain the same opinion, that the statute began to run from the time of the act done by the defendant, *although the plaintiff had not any notice of it;* there not being evidence of any fraud practised by the defendant in order to prevent the plaintiff from obtaining knowledge of that which had been done.
>
> (d) *These two expressions mean precisely the same thing.*

Patents are dated, executed, and recorded on the same day. This has been the invariable practice in the Land Office. Being matters of record, they are

not "issued" until recorded, and, being matters of record, they operate from the date of record, whether the letters patent are delivered or not.

United States v. *Schurz*, 102 U. S., 378.

When a patent is procured by fraud, or results from an inadvertence or mistake, the cause of action to set it aside arises coincidentally with the taking effect of the instrument; that is, on the day of the date, record, and issuance.

(e) *The expression "accrual of the cause of action" is commonly used in statutes of this character merely because it is a convenient generic expression of the general legislative purpose to start the time in each case when the right to sue arises.*

Very commonly the periods are defined to run from the accrual of the cause of action. There is a natural and obvious reason for this. Usually the statutory classifications are generic and it would not be convenient, even if it were possible, to attempt specific definitions of the events which should start the running of the limitation periods in each species of case. Almost universally the general purpose is that the time shall begin to run against the right to sue as soon as the right to sue arises. The particular events which may give rise to different causes of action are too various and uncertain to warrant an attempt at statutory definition. They are all covered, however, by the generic expression "accrual of the cause of action," which agrees exactly with the statutory

purpose. Hence that expression is the one commonly adopted, and will be found frequently mentioned in the reports.

But nothing can be more certain than this: That the term "accrual" (or its equivalent) is never employed by the legislatures, in preference to some other, because of any peculiar relation of that term to the doctrine we are now discussing.

> (f) *Congress used the words "after the issuance of such patents" because it was dealing with a species of cases and the generic description "accrual of the cause of action" was unnecessary.*

As we have seen, the cause of action accrues when the patent issues. This being so, it would have been unnecessary and unnatural to employ the words "accrual of the cause of action." We do not perceive any force whatever in the contrary contention so elaborately set forth in the opposing briefs.

> (g) *The rule has been applied to statutes prescribing periods to run from specific events.*

A clear-cut illustration will be found in one of the cases which we have already cited, *Deake*, appellant, 80 Me., 50. There the statute read:

> After twenty years from the death of any person, no probate of his will shall be originally granted.

The testator died August 7, 1854. His will was fraudulently concealed until 1885. The court followed *Sherwood* v. *Sutton* and other authorities and allowed for the time during which the will remained concealed. The statute there does not speak of the

"accrual of the cause of action," yet the court had no difficulty in applying the doctrine.

Many statutes of limitation do not employ the words "accrual of the cause of action." As instances may be mentioned those which provide that persons under age, *non compos mentis*, or imprisoned, may bring certain actions for certain stated periods of time *after the removal of their disability;* that where nonresidents die leaving property within the jurisdiction, suits on claims against such persons may be brought during a period *after the death of the decedent;* that claims disputed by an executor must be put in suit within a period *after such rejection or dispute;* statutes providing that suits shall be brought within a certain period *after the date of letters testamentary or of administration*, etc. No reason exists why the rule should not apply in all such cases.

An illustration is found in the case of *Leffingwell* v. *Warren*, 2 Black, 599, which is referred to at great length in the opposing briefs. That case involves this Wisconsin statute:

> Any suit or proceedings for the recovery of lands sold for taxes, except in cases where the taxes have been paid or the lands redeemed as provided by law, shall be commenced within three years from the time of recording the tax deed of sale and not thereafter.

The action was not grounded on fraud. The plaintiff sought to avoid the bar of the statute by reason of the fact that the purchaser under the tax sale had not gone into possession, and the conten-

tion was that the statute did not commence to run until that event. The court refused to engraft this exception upon the statute. In the brief of Messrs. Vaile and McAllister, commencing at page 13, this case is largely quoted. From the paragraph quoted at the bottom of page 13 of the brief (page 604 of the opinion) the first two sentences were omitted and we therefore quote the entire paragraph here:

> *It is not claimed that fraud is an element in the case. The facts show there was none.* The only exceptions made in the statute which prevent its application are where the taxes are paid before the sale, and where the land is redeemed within the time prescribed by law after the sale.

Here is a statute which runs from the date of the recordation of the tax deed. But Mr. Justice Swayne took occasion to protect, as to that statute, the very doctrine for which we are here contending. He was careful to say that fraud was not an element in the case.

(h) *The Statute of 21 James I, to which the exception was so often applied, does not use the word "accrue" or any derivative thereof.*

The language is "next after the *cause* of such actions or suit and not after." By an oversight appellants' brief seems to refer to this statute as containing the words "after the cause of action accrues" (p. 129, but cf. id., 127).

3. Reference to certain authorities cited in opposing briefs.

The following are cited by Messrs. Vaile & McAllister to establish that the rule can not apply "where time runs from a specific date":

In re Brown, 4 Fed. Cas., No. 1983.
Pickett v. *McGavick*, 19 Fed. Cas., No. 11, 126.
Matter of Herzig, 15 Abb., New Cas., 179.
Mall v. *Ullrich*, 37 Fed., 653.

These cases, except the third, are all discussed and distinguished in *United States* v. *Exploration Co.*, *supra* (203 Fed., p. 392). They all arose under section 34 of the bankruptcy act (14 Stat., 533), which is as follows:

> That any creditor or creditors of said bankrupt, whose debt was proved or provable against the estate in bankruptcy, who shall see fit to contest the validity of said discharge on the ground that it was fraudulently obtained may, at any time within two years after the date thereof, apply to the court which granted it to set aside and annul the same. * * * The court shall cause reasonable notice of said application to be given to said bankrupt and order him to appear and answer the same within such time as to the court shall seem fit and proper. If, upon the hearing of said parties, the court shall find that the fraudulent acts, or any of them, set forth as aforesaid by said creditor or creditors against the bankrupt are proved, and *that said creditor or creditors had no knowledge of the same* until after the granting of said dis-

> charge, judgment shall be given in favor of said creditor or creditors, and the discharge of said bankrupt shall be set aside and annulled. But if said court shall find that said fraudulent acts and all of them, set forth as aforesaid, are not proved, *or that they were known* to said creditor or creditors before the granting of said discharge, then judgment shall be rendered in favor of the bankrupt, and the validity of his discharge shall not be affected by said proceedings.

The burden of the opinions is that section 34 relates *specifically* to discharges in bankruptcy *fraudulently obtained*, and to nothing else. As said in the case of *Pickett* v. *McGavick*, *supra:*

> It positively provides that the discharge may be contested at any time within two years after the date thereof, on the ground that it was fraudulently obtained. That time (the date) must, then, in my judgment, be taken as the time when the cause of action accrues.

In the case of *In re Brown*, *supra*, 4 Fed. Cas., No. 1983, the court, in considering section 34, used the language quoted by the appellants (Br., p. 118), but an examination of the language immediately following the part so quoted will show that the decision really turned upon the fact that the statute in terms is limited to cases of concealed fraud. We give the conclusion of the court's opinion:

> In fact, as the only ground for annulling a discharge is that it was fraudulently obtained,

> and fraud is almost always secret and concealed from the party defrauded, this limitation is practically no limitation at all, if it is avoided by any creditor's discovery of the fraud at any time after the discharge. The statute was designed, even in cases of fraudulent concealment, to impose a certain diligence of investigation and discovery on creditors. Indeed, the statute, in terms, *is limited to cases of secret or concealed fraud*, since it expressly requires proof that the creditor applying had "no knowledge of the same until after the granting of the discharge." The minds of the framers of this section, therefore, were directly called to the fact that the discovery of the fraud might not be made till after the discharge, and the language used shows clearly that they did not intend to limit the time from that discovery, but from the date of the discharge.

There is another ground for distinguishing these cases. A discharge in bankruptcy is a judgment and has all the force of a judgment. As said in the *Exploration Company's case*, statutes limiting the time for reviewing such judgments "stand in the same position as statutes relating to the time in which appeals may be taken." Probably the provision of section 34 was jurisdictional. It applied to the forum as well as the time. It was analogous to a regulation of motions for new trial.

Amy v. *Watertown*, 22 Fed., 418; 130 U. S., 320, holds that one is not excused from bringing suit within the prescribed time and endeavoring to secure

service merely because process will be evaded by the defendant. As we have already shown, the exception on the ground of fraud was recognized by this court in that very case.

Chemical National Bank v. *Kissane*, 32 Fed., 429, is similar, as is also *Engel* v. *Fischer*, 102 N. Y., 400.

United States v. *Maillard*, 4 Ben., 459; Fed. Cas., 15709, besides being largely based on the fact of specific exceptions in the statute construed, was decided on the faith of the New York rule before *Bailey* v. *Glover* and was necessarily overruled by that case. See *Exploration Company's case*, at p. 392.

Much reliance seems to be placed by opposing counsel upon the three decisions of this court, which, in one of the briefs of the *amici curiae* it is confidently asserted, "considering this identical statute of limitation, determine the present question in favor of our position." The cases are:

United States v. *Winona R. R. Co.*, 165 U. S., 463;

United States v. *Chandler-Dunbar Co.*, 209 U. S., 447; and

Louisiana v. *Garfield*, 211 U. S., 70.

Without taking the space to review these authorties at length, we will simply say that the question now considered was neither involved nor suggested in any one of them. The cases are all briefly but accurately explained and distinguished by the Circuit Court of Appeals for the Eighth Circuit in the *Exploration Company's case* at page 391.

4. Answer to the insistent argument that the statute must be enforced literally to insure the stability of titles and protect innocent purchasers.

(a) *The argument applies to conveyances by individuals as well as to conveyances by the Government. It goes to the abolition of the rule in all cases, rather than in this particular class of cases, and thus contradicts the unanimous opinion of all courts of equity since the first statute of limitations was enacted.*

Compared with the patents of the Government, the conveyances of individuals are as thousands to one. There is not one respectable reason for withholding the rule in cases affecting patents which may not be assigned with equal or greater force in cases affecting private deeds. If the Government is more likely to bring suit, proportionately, than individuals are (which we do not admit), it must be because the Government is peculiarly liable to fraudulent imposition—a fact well recognized in the opinions of this court.

This fact in itself affords a strong reason for *not* overriding the general principle upon which we rely.

(b) *Honest titles are amply protected by the extreme difficulty of overcoming patents and by the perfect defense of bona fide purchase, recognized by the courts.*

(c) *The argument, in effect, invites this court to question the good faith of the executive branch of the Government and to doubt the capacity of*

the judiciary and Congress to correct abuses if they occur.

(5) There is nothing in the legislative history of this act, or in that of the act of March 3, 1896 (29 Stat., 42), which conflicts in any degree with our position here.

In Congressional Record, vol. 28, pt. 2, p. 935, will be found this statement from Mr. McRae concerning the act of 1891:

> It passed without consideration. No one so far as the record shows knew of any such passing. It was put in by a conference committee, and no one except the conferees had any idea that there was any such provision in the bill.

As pointed out by counsel for the appellants (Brief, 119), the provision was inserted in a voluminous act dealing with many subjects concerning the public lands. It does not appear to have been before any committee of the House or Senate, or to have become the subject of any explanation or debate upon the floor. We do not question that it was intended to relate to patents procured by fraud, but it was equally intended to relate to patents issued through mistake of fact or error of law or voidable for any other reason.

No light can be thrown upon this enactment from the proceedings attending the passage of the act of March 3, 1896 (29 Stat., 42). The latter by its terms applies only to patents issued under railroad or wagon

road grants. It does not affect this case, and, inasmuch as, owing to its peculiar language, serious questions concerning its construction have arisen in other litigation, we suggest that it would be well to defer any attempt to define its full purpose until those or similar questions shall have been presented to this court for decision.

Even if the congressional proceedings concerning the act of 1896 could be properly invoked to restrict in a serious manner the otherwise normal meaning of a statute passed five years before by a different Congress, those proceedings when fairly considered prove nothing in favor of the appellants here. The act of 1896 was intended, primarily, to extend the time for the adjustment of the land grants mentioned, in all respects. There is nothing in the act, nor in the reports or debates concerning it, which affords the slightest suggestion of an intention to condone fraud, or to enable fraudulent grantees to obtain a confirmation of their patents by acts of fraudulent concealment perpetrated against the Government. It was recognized in the report of Mr. Lacey, and in the debate, that the limitation might operate to protect some titles founded in fraud as well as mistake, but the remarks upon this subject, it will be seen upon examination of the Congressional Record, have nothing to do with the matter of concealed frauds, or the possible operation of the statute in such cases. The question at issue was the general one whether there should be any limitation at all.

6. Response to the suggestion that the benefits of the rule must be denied the United States because of the technical difficulty of defining the manner in which the Government may be affected by notice.

The Government is a corporation acting through its agents. It may receive notice through its appropriate agents. The question whether such notice has been in fact received is a question for determination upon the facts of the case in which it arises.

In the present case it is obvious that the effect of the notice which came to the Government prior to 1905 was destroyed by the fraudulent acts of those who perpetrated the original fraud.

We do not think it necessary to discuss this proposition any further. We find it difficult to conceive how such a proposition could be seriously advanced.

7. Regarding the provision in the act of 1891 relating to patents theretofore issued.

The act provides "that suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act."

Fantastic situations, of studied complexity, are suggested as possibly arising under this limitation. No case involving it is now before the court, nor is it likely that any such will ever occur. However, no difficulty is perceived in applying the rule to that part of the statute, for, as has been shown, the length of time during which the fraud remains undiscovered may simply be added to the statute.

8. Some concluding observations concerning the statute.

Finally, it is suggested in the brief of Messrs. Vaile and McAllister (p. 53) that if this rule is applied to this statute, public-land States will be harassed by this class of litigation for many years to come; that entrymen die and the owner of property received from them may lose the benefit of their testimony; and that "one untruthful entryman may, for his own purpose, devise a story, to be urged after that statutory date of limitation, and which an honest owner of property may then find himself without sufficient proofs to refute."

All of this may be said of transactions between individuals. Whenever the Government attempts to enforce its rights against fraudulent grantees, "stability of titles," "finality of Government grants," "innocent owners," and other specters commence to stalk. The law of the land gives to grantees of individuals no less a degree of protection than to those of the Government. It need give no greater. It is perfectly plain that the rule urged here can in no case reach any persons but those guilty of fraud and transferees having notice of the fraud at the time of their purchase.

THE CONCLUSION OF THE SECRETARY OF THE INTERIOR THAT THE PATENTS SHOULD BE ISSUED IS NOT A BAR TO THIS SUIT.

The contention of the appellants that the finding of the Secretary of the Interior is conclusive and therefore a bar to this suit is wholly without merit.

Every land entry is investigated in some degree by the Interior Department before patent is issued. The quotation from *Johnson* v. *Drew*, 171 U. S., 193, in appellants' brief, itself shows that while the decisions of the Land Department on matters of fact are generally conclusive, there must be absence of fraud or deceit. This has often been decided by this court, and the right of the Government to sue in the courts in cases of fraud is clear; *United States* v. *Minor*, 114 U. S., 233; *Moore* v. *Robbins*, 96 U. S., 530; *United States* v. *Hughes*, 11 How., 552; *Hughes* v. *United States*, 4 Wall., 232; *United States* v. *Atherton*, 102 U. S., 372; *Moffat* v. *United States*, 112 U. S., 24; *Washington Securities Co.* v. *United States*, 234 U. S., 76.

CONCLUSION.

It is respectfully submitted that the Circuit Court of Appeals should be affirmed.

ERNEST KNAEBEL,
Assistant Attorney General.
HENRY C. LEWIS,
Special Assistant to the Attorney General.
JANUARY, 1915.

APPENDIX.

Name of entryman.	Application.	Final proof.	Mortgage to Krlbs.	Deed to Wlild.
S. A. D. Puter	Jan. 19, 1900	Apr. 18, 1900	.....	Apr. 23, 1900
John L. Green	Jan. 31, 1900	Apr. 18, 1900	Apr. 18, 1900	Apr. 23, 1900
Thomas Wilson	Jan. 22, 1900	Apr. 18, 1900	Apr. 19, 1900	Apr. 26, 1900
Charles Barr	Jan. 21, 1900	Apr. 18, 1900	Apr. 18, 1900	Apr. 23, 1900
Charles Burley	Jan. 31, 1900	Apr. 18, 1900	Apr. 18, 1900	Apr. 23, 1900
Neal D. Dozier	Jan. 20, 1900	Apr. 18, 1900	Apr. 19, 1900	Apr. 23, 1900
Harry Saltmarsh	Feb. 1, 1900	Apr. 18, 1900	Apr. 19, 1900	Apr. 24, 1900
Harry C. Barr	Jan. 18, 1900	Apr. 18, 1900	Apr. 19, 1900	Apr. 25, 1900
Edward Finley	Jan. 31, 1900	Apr. 18, 1900	Apr. 18, 1900	Apr. 23, 1900
John J. Jaggy	Jan. 20, 1900	Apr. 18, 1900	Apr. 19, 1900	Apr. 23, 1900
J. S. Phillips	Jan. 31, 1900	Apr. 18, 1900	Apr. 18, 1900	Apr. 23, 1900 Apr. 23, 1900
Zebulin Smith	Jan. 20, 1900	Apr. 18, 1900	Correction deed.	June 13, 1900
Douglas Adkinson	Feb. 1, 1900	Apr. 18, 1900	Apr. 19, 1900	Apr. 23, 1900
Sadie E. Puter	Jan. 19, 1900	Apr. 19, 1900	.....	Apr. 23, 1900
Elvira Jacobs	Jan. 19, 1900	Apr. 20, 1900	Apr. 20, 1900	Apr. 23, 1900
Isaac R. Borum	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 19, 1900
Benjamin F. Kirk	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 21, 1900
George L. Thompson	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 19, 1900
Peter Buffington	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 19, 1900
John Harrison	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 17, 1900
Jennie Moulton	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 19, 1900
Jacob W. Stillwell	Feb. 26, 1900	May 16, 1900	May 16, 1900 Apr. 19, 1900	May 18, 1900 Apr. 25, 1900
Luella Beeman	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 19, 1900
Henry B. Blakely	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 19, 1900
Hugh Blakely	Feb. 26, 1900	May 16, 1900	Apr. 16, 1900	May 19, 1900
Elam Miller	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 19, 1900
Frank W. Burford	Feb. 26, 1900	May 16, 1900	May 16, 1900	May 21, 1900
James B. Cooley	Feb. 26, 1900	May 16, 1900	Apr. 16, 1900	May 17, 1900

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